

UNITED STATES OF AMERICA  
NATIONAL LABOR RELATIONS BOARD  
RC PETITION

DO NOT WRITE IN THIS SPACE

Case No.

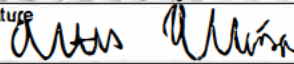
02-RC-279315

Date Filed

07/01/2021

**INSTRUCTIONS:** Unless e-Filed using the Agency's website, [www.nlr.gov/](http://www.nlr.gov/), submit an original of this Petition to an NLRB office in the Region in which the employer concerned is located. The petition must be accompanied by both a showing of interest (see 6b below) and a certificate of service showing service on the employer and all other parties named in the petition of: (1) the petition; (2) Statement of Position form (Form NLRB-505); and (3) Description of Representation Case Procedures (Form NLRB 4812). The showing of interest should only be filed with the NLRB and should not be served on the employer or any other party.

**1. PURPOSE OF THIS PETITION: RC-CERTIFICATION OF REPRESENTATIVE** - A substantial number of employees wish to be represented for purposes of collective bargaining by Petitioner and Petitioner desires to be certified as representative of the employees. The Petitioner alleges that the following circumstances exist and requests that the National Labor Relations Board proceed under its proper authority pursuant to Section 9 of the National Labor Relations Act.

<b>2a. Name of Employer:</b> Intrepid Museum		<b>2b. Address(es) of Establishment(s) involved (Street and number, City, State, ZIP code):</b> One Intrepid Square 12th Avenue and 46th street New York, N.Y. 10036	
<b>3a. Employer Representative - Name and Title:</b> Thomas, Coumbe V.P. Human Resources		<b>3b. Address (if same as 2b - state same):</b> same	
<b>3c. Tel. No.</b> 646-381-5190	<b>3d. Cell No.</b> 646-401-4717	<b>3e. Fax No.</b> 646-381-5191	<b>3f. E-Mail Address</b> tcoumbe@intrepidmuseum.org
<b>4a. Type of Establishment (Factory, mine, wholesaler, etc.):</b> Museum		<b>4b. Principal Product or Service</b>	
<b>5b. Description of Unit Involved:</b> <b>Included:</b> All full time and regular part time security officers employed at Intrepid Museum <b>Excluded:</b> Per diem security officers, locksmith, and all other employee and supervisor		<b>5a. City and State where unit is located:</b> New York, New York	
<b>6a. Number of Employees in Unit:</b> 24		<b>6b. Do a substantial number (30% or more) of the employees in the unit wish to be represented by the Petitioner?</b> <input type="checkbox"/> Yes <input type="checkbox"/> No	
<b>Check One:</b> <input type="checkbox"/> 7a. Request for recognition as Bargaining Representative was made on (Date) _____ and Employer declined recognition on or about (Date) _____ (If no reply received, so state). <input type="checkbox"/> 7b. Petitioner is currently recognized as Bargaining Representative and desires certification under the Act.			
<b>8a. Name of Recognized or Certified Bargaining Agent (If none, so state)</b> Security, Police and Fire Professionals of America Local 511		<b>8b. Address:</b> 2805 n. 47th street Apt. 403 Philadelphia, PA 19131	
<b>8c. Tel. No.</b>	<b>8d. Cell No.</b> 215-983-4303	<b>8e. Fax No.</b>	<b>8f. E-Mail Address</b> (b) (6), (b) (7)(C)
<b>8g. Affiliation, if any:</b>		<b>8h. Date of Recognition or Certification</b>	
<b>9. Is there now a strike or picketing at the Employer's establishment(s) involved?</b> No <input checked="" type="checkbox"/> If so, approximately how many employees are participating? _____ (Name of Labor Organization) _____, has picketed the Employer since (Month, Day, Year) _____		<b>8i. Expiration Date of Current or Most Recent Contract, if any (Month, Day, Year)</b> 12/31/2020	
<b>10. Organizations or individuals other than Petitioner and those named in items 8 and 9, which have claimed recognition as representatives and other organizations and individuals known to have a representative interest in any employees in the unit described in item 5b above. (If none, so state)</b> none			
<b>10a. Name</b> Special and Superior Officers Benevolent Association		<b>10b. Address</b> 199 North Wellwood Avenue Lindenhurst N.Y. 11757	
<b>10c. Tel. No.</b> 631-587-9116		<b>10d. Cell No.</b> 646-258-9449	
<b>10e. Fax No.</b> 631-587-3780		<b>10f. E-Mail Address</b> laborlawyer@live.com	
<b>11. Election Details: If the NLRB conducts an election in this matter, state your position with respect to any such election:</b>			
<b>11a. Election Type:</b> <input checked="" type="checkbox"/> Manual <input type="checkbox"/> Mail <input type="checkbox"/> Mixed Manual/Mail		<b>11b. Election Date(s):</b> 07/15/2021	
<b>11c. Election Time(s):</b> 7:30am-8:30am and 3:30pm- 4:30pm		<b>11d. Election Location(s):</b>	
<b>12a. Full Name of Petitioner (including local name and number):</b> Special and Superior Officers Benevolent Association		<b>12b. Address (street and number, city, State and ZIP code):</b> 199 N. Wellwood Avenue N.Y. 11757	
<b>12c. Full name of national or international labor organization of which Petitioner is an affiliate or constituent (if none, so state):</b>			
<b>12d. Tel. No.</b>	<b>12e. Cell No.</b> 631-587-9116	<b>12f. Fax No.</b> 631-618-3029	<b>12g. E-Mail Address</b> laborlawyer@live.com
<b>13. Representative of the Petitioner who will accept service of all papers for purposes of the representation proceeding.</b>			
<b>13a. Name and Title:</b> James Grisi, Esq Attorney		<b>13b. Address (street and number, city, State and ZIP code):</b> 199 N. Wellwood N.Y. 11757	
<b>13c. Tel. No.</b>	<b>13d. Cell No.</b> 646-258-9449	<b>13e. Fax No.</b> 631-618-3029	<b>13f. E-Mail Address</b> laborlawyer@live.com
<b>I declare that I have read the above petition and that the statements are true to the best of my knowledge and belief.</b>			
<b>Name (Print)</b> Arturo Urena		<b>Signature</b> 	<b>Title</b> Organizer
			<b>Date</b> 07/01/21

WILLFUL FALSE STATEMENTS ON THIS PETITION CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)

## PRIVACY ACT STATEMENT

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. § 151 et seq. The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing representation and related proceedings or litigation. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. Reg. 74942-43 (Dec. 13, 2006). The NLRB will further explain these uses upon request. Disclosure of this information to the NLRB is voluntary; however, failure to supply the information may cause the NLRB to decline to invoke its processes.

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 2**

**INTREPID MUSEUM FOUNDATION, INC.**

**Employer**

**and**

**Case 02-RC-279315**

**SPECIAL AND SUPERIOR OFFICERS  
BENEVOLENT ASSOCIATION**

**Petitioner**

**ORDER APPROVING WITHDRAWAL REQUEST AND  
WITHDRAWING NOTICE OF REPRESENTATION HEARING**

**IT IS ORDERED** that the Petitioner's request to withdraw the petition is approved.

**IT IS FURTHER ORDERED** that the Notice of Representation Hearing previously  
issued in this matter is withdrawn.

Dated: July 20, 2021

*John J. Walsh, Jr.*

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JOHN J. WALSH, JR.  
REGIONAL DIRECTOR  
NATIONAL LABOR RELATIONS BOARD  
REGION 02  
26 Federal Plz Ste 3614  
New York, NY 10278-3699

UNITED STATES GOVERNMENT  
NATIONAL LABOR RELATIONS BOARD

**RC PETITION**

**DO NOT WRITE IN THIS SPACE**

Case No.  
04-RC-269155

Date Filed  
11/18/20

**INSTRUCTIONS:** Unless e-Filed using the Agency's website, [www.nlr.gov](http://www.nlr.gov), submit an original of this Petition to an NLRB office in the Region in which the employer concerned is located. The petition must be accompanied by both a showing of interest (see 6b below) and a certificate of service showing service on the employer and all other parties named in the petition of: (1) the petition; (2) Statement of Position form (Form NLRB-505); and (3) Description of Representation Case Procedures (Form NLRB 4812). The showing of interest should only be filed with the NLRB and should not be served on the employer or any other party.

**1. PURPOSE OF THIS PETITION: RC-CERTIFICATION OF REPRESENTATIVE** - A substantial number of employees wish to be represented for purposes of collective bargaining by Petitioner and Petitioner desires to be certified as representative of the employees. The Petitioner alleges that the following circumstances exist and requests that the National Labor Relations Board proceed under its proper authority pursuant to Section 9 of the National Labor Relations Act.

<b>2a. Name of Employer</b> Allied Universal Security Services		<b>2b. Address(es) of Establishment(s) involved</b> (Street and number, city, State, ZIP code) 161 Washington Street, Suite 600 PA Conshohocken 19428-	
<b>3a. Employer Representative - Name and Title</b> David Chapla		<b>3b. Address</b> (If same as 2b - state same) 161 Washington Street, Suite 600 PA Conshohocken 19428-	
<b>3c. Tel. No.</b> (484) 351-1300	<b>3d. Cell No.</b>	<b>3e. Fax No.</b>	<b>3f. E-Mail Address</b> David.Chapla@aus.com
<b>4a. Type of Establishment</b> (Factory, mine, wholesaler, etc.) Services		<b>4b. Principal product or service</b> Security	
		<b>5a. City and State where unit is located:</b> Conshohocken, PA	

<b>5b. Description of Unit Involved</b>		<b>6a. No. of Employees in Unit:</b> 20
<b>Included:</b> See Attached Page 2 for additional details		<b>6b. Do a substantial number (30% or more) of the employees in the unit wish to be represented by the Petitioner?</b> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>
<b>Excluded:</b> See Attached Page 2 for additional details		

**Check One:** ☒ 7a. Request for recognition as Bargaining Representative was made on (Date) \_\_\_\_\_ and Employer declined recognition on or about \_\_\_\_\_ (Date) (If no reply received, so state).  
☐ 7b. Petitioner is currently recognized as Bargaining Representative and desires certification under the Act.

<b>8a. Name of Recognized or Certified Bargaining Agent</b> (If none, so state).		<b>8b. Address</b>	
<b>8c. Tel No.</b>	<b>8d. Cell No.</b>	<b>8e. Fax No.</b>	<b>8f. E-Mail Address</b>
<b>8g. Affiliation, if any</b>		<b>8h. Date of Recognition or Certification</b>	<b>8i. Expiration Date of Current or Most Recent Contract, if any</b> (Month, Day, Year)

**9. Is there now a strike or picketing at the Employer's establishment(s) involved?** \_\_\_\_\_ If so, approximately how many employees are participating? \_\_\_\_\_  
(Name of labor organization) \_\_\_\_\_, has picketed the Employer since (Month, Day, Year) \_\_\_\_\_.

**10. Organizations or individuals other than Petitioner and those named in items 8 and 9, which have claimed recognition as representatives and other organizations and individuals known to have a representative interest in any employees in the unit described in item 5b above.** (If none, so state)

<b>10a. Name</b>	<b>10b. Address</b>	<b>10c. Tel. No.</b>	<b>10d. Cell No.</b>
		<b>10e. Fax No.</b>	<b>10f. E-Mail Address</b>

**11. Election Details:** If the NLRB conducts an election in this matter, state your position with respect to any such election.

<b>11a. Election Type:</b> <input type="checkbox"/> Manual <input checked="" type="checkbox"/> Mail <input type="checkbox"/> Mixed Manual/Mail	<b>11b. Election Date(s):</b> December 1, 2020	<b>11c. Election Time(s):</b> Mail	<b>11d. Election Location(s):</b> Mail
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<b>(b) (6), (b) (7)(C) Name of Petitioner (including local name and number)</b> Security Officers Union	<b>12b. Address (street and number, city, state, and ZIP code)</b> P.O. Box 13150 PA Philadelphia 19101-
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**12c. Full name of national or international labor organization of which Petitioner is an affiliate or constituent** (if none, so state)  
None

<b>12d. Tel No.</b> (267) 809-2393	<b>12e. Cell No.</b>	<b>12f. Fax No.</b>	<b>E-Mail Address</b> (b) (6), (b) (7)(C) @psouonline.com
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**13. Representative of the Petitioner who will accept service of all papers for purposes of the representation proceeding.**

<b>13a. Name and Title</b> Lance Geren Attorney O'Donoghue & O'Donoghue, LLP		<b>13b. Address (street and number, city, state, and ZIP code)</b> 325 Chestnut Street, Suite 600 PA Philadelphia 19106-	
<b>13c. Tel No.</b> (215) 629-4970	<b>13d. Cell No.</b> (202) 805-6148	<b>13e. Fax No.</b> (215) 629-4996	<b>13f. E-Mail Address</b> lgeren@odonoghuelaw.com

**I declare that I have read the above petition and that the statements are true to the best of my knowledge and belief.**

<b>Name (Print)</b> Lance Geren	<b>Signature</b> Lance Geren	<b>Title</b> Attorney	<b>Date</b> 11/18/2020 13:13:01
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**WILLFUL FALSE STATEMENTS ON THIS PETITION CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)**

**PRIVACY ACT STATEMENT**

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. § 151 et seq. The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing representation and related proceedings or litigation. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. Reg. 74942-43 (Dec. 13, 2006). The NLRB will further explain these uses upon request. Disclosure of this information to the NLRB is voluntary; however, failure to supply the information will cause the NLRB to decline to invoke its processes.

Attachment

DO NOT WRITE IN THIS SPACE	
Case	Date Filed

**Employees Included**

All full-time and regular part-time security officer bike patrol employed by the Employer in its Center City District in Philadelphia, Pennsylvania.

**Employees Excluded**

All other employees and supervisors as defined within the Act.





UNITED STATES GOVERNMENT  
NATIONAL LABOR RELATIONS BOARD  
REGION 4  
100 Penn Square East  
Suite 403  
Philadelphia, PA 19107

Agency Website:  
[www.nlrb.gov](http://www.nlrb.gov)  
Telephone: (215)597-7601  
Fax: (215)597-7658

January 19, 2021

Lance Geren, Attorney  
O'Donoghue & O'Donoghue, LLP  
325 Chestnut Street, Suite 600  
Philadelphia, PA 19106

Re: Allied Universal Security Services  
Case 04-RC-269155

Dear Mr. Geren:

The above-captioned case, petitioning for an investigation and determination of representative under Section 9(c) of the National Labor Relations Act, has been carefully investigated and considered.

**Decision to Dismiss:** As a result of the investigation, I find that further proceedings are unwarranted. The petition, filed by Philadelphia Security Officers Union on November 18, 2020, sought a unit of “full-time and regular part-time security officer bike patrol” employed by Allied Universal Security Services (the Employer). The security officers are contracted to provide security services to Center City District, a private-sector sponsored business improvement organization in Philadelphia, Pennsylvania. The investigation disclosed that employees in the petitioned-for unit are already covered by a multi-employer collective bargaining agreement between Service Employees International Union, Local 32BJ and the Employer which is effective from September 30, 2020 to September 30, 2021. That agreement encompasses a unit of full-time and regular part-time security officers at or assigned to “Philadelphia Market,” a geographical region described in the agreement. It is well-settled that a written collective bargaining agreement signed by the parties which contains substantial terms and conditions of employment constitutes a bar to a subsequently filed petition. [Appalachian Shale Products Company, 121 NLRB 1160 \(1958\)](#); see also [Gaylord Broadcasting Co., 250 NLRB 198 \(1980\)](#). I find that no exception to the contract bar rule applies here. The contract does not amount to a premature extension of the prior four-year multi-employer collective bargaining agreement, given that the parties made substantial changes to unit employees’ terms and conditions of employment when negotiating the effective one-year contract. See [Shen-Valley Meat Packers, Inc., 261 NLRB 958 \(1982\)](#). Any concerns over employee lack of free choice in their bargaining representative are unfounded: although a contract bar presently exists, the employees could have filed a petition at any time during the final year of the four-year contract preceding the current contract, when there was no

bar. Furthermore, the contract bar doctrine applies notwithstanding the fact that Local 32BJ admits both guards and non-guards to membership. [C Stay Security, 311 NLRB 252 \(1993\)](#). Lastly, the fact that the unit description contained in the effective collective bargaining agreement is broadly written does not invalidate the contract. Although you assert that the unit description could arguably encompass other established collective bargaining units of other employers, the representational status of those other units is not before the Region at this time, and the petitioned-for employees clearly fall within the unit description. Therefore, the petition is untimely. Accordingly, the Notice of Hearing previously issued is withdrawn, and I am dismissing the petition in this matter.

***Right to Request Review:*** Pursuant to Section 102.67 of the National Labor Relations Board's Rules and Regulations, you may obtain a review of this action by filing a request with the Executive Secretary, National Labor Relations Board, 1015 Half Street SE, Washington, DC 20570-0001. A copy of the request for review must be served on each of the other parties, as well as on the undersigned, in accordance with the requirements of the Board's Rules and Regulations. The request for review must contain a complete statement of the facts and reasons on which it is based.

***Procedures for Filing Request for Review:*** Pursuant to Section 102.5 of the Board's Rules and Regulations, a request for review must be filed by electronically submitting (E-Filing) it through the Agency's web site ([www.nlr.gov](http://www.nlr.gov)), unless the party filing the request for review does not have access to the means for filing electronically or filing electronically would impose an undue burden. A request for review filed by means other than E-Filing must be accompanied by a statement explaining why the filing party does not have access to the means for filing electronically or filing electronically would impose an undue burden. Section 102.5(e) of the Board's Rules do not permit a request for review to be filed by facsimile transmission. A copy of the request for review must be served on each of the other parties to the proceeding, as well as on the undersigned, in accordance with the requirements of the Board's Rules and Regulations. The request for review must comply with the formatting requirements set forth in Section 102.67(i)(1) of the Board's Rules and Regulations. Detailed instructions for using the NLRB's E-Filing system can be found in the [E-Filing System User Guide](#).

A request for review must be received by the Executive Secretary of the Board in Washington, DC, by close of business (**5 p.m. Eastern Time**) on **Tuesday, February 2, 2021**, unless filed electronically. If filed electronically, it will be considered timely if the transmission of the entire document through the Agency's website is **accomplished by no later than 11:59 p.m. Eastern Time on Tuesday, February 2, 2021**.

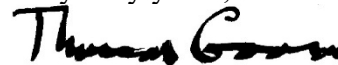
Filing a request for review electronically may be accomplished by using the E-Filing system on the Agency's website at [www.nlr.gov](http://www.nlr.gov). Once the website is accessed, click on **E-File Documents**, enter the NLRB Case Number, and follow the detailed instructions. The responsibility for the receipt of the request for review rests exclusively with the sender. A failure to timely file the request for review will not be excused on the basis that the transmission could not be accomplished because the Agency's website was off line or unavailable for some other

reason, absent a determination of technical failure of the site, with notice of such posted on the website.

Upon good cause shown, the Board may grant special permission for a longer period within which to file a request for review. A request for extension of time, which must also be filed electronically, should be submitted to the Executive Secretary in Washington, and a copy of such request for extension of time should be submitted to the Regional Director and to each of the other parties to this proceeding. A request for an extension of time must include a statement that a copy has been served on the Regional Director and on each of the other parties to this proceeding in the same manner or a faster manner as that utilized in filing the request with the Board.

Any party may, within 5 business days after the last day on which the request for review must be filed, file with the Board a statement in opposition to the request for review. An opposition must be filed with the Board in Washington, DC, and a copy filed with the Regional Director and copies served on all the other parties. The opposition must comply with the formatting requirements set forth in §102.67(i)(1). Requests for an extension of time within which to file the opposition shall be filed pursuant to §102.2(c) with the Board in Washington, DC, and a certificate of service shall accompany the requests. The Board may grant or deny the request for review without awaiting a statement in opposition. No reply to the opposition may be filed except upon special leave of the Board.

Very truly yours,



Thomas A. Goonan  
Regional Director

cc: Office of the Executive Secretary (by e-mail)

David Chapla, Vice President of Labor Relations  
Allied Universal Security Services  
161 Washington Street, Suite 600  
Conshohocken, PA 19428

Matthew D. Crawford, Esquire  
Martenson, Hasbrouck & Simon LLP  
2573 Apple Valley Road NE  
Atlanta, GA 30319

Kayla L. Robinson, Esquire  
Martenson, Hasbarouk & Simon, LLP  
2573 Apple Valley Road NE  
Atlanta, GA 30319

Colin Koch, President  
Philadelphia Security Officers Union  
P.O. Box 13150  
Philadelphia, PA 19101

UNITED STATES GOVERNMENT  
NATIONAL LABOR RELATIONS BOARD

**RC PETITION**

**DO NOT WRITE IN THIS SPACE**

Case No.  
04-RC-271327

Date Filed  
1/13/21

**INSTRUCTIONS:** Unless e-Filed using the Agency's website, [www.nlr.gov](http://www.nlr.gov), submit an original of this Petition to an NLRB office in the Region in which the employer concerned is located. The petition must be accompanied by both a showing of interest (see 6b below) and a certificate of service showing service on the employer and all other parties named in the petition of: (1) the petition; (2) Statement of Position form (Form NLRB-505); and (3) Description of Representation Case Procedures (Form NLRB 4812). The showing of interest should only be filed with the NLRB and should not be served on the employer or any other party.

**1. PURPOSE OF THIS PETITION:** RC-CERTIFICATION OF REPRESENTATIVE - A substantial number of employees wish to be represented for purposes of collective bargaining by Petitioner and Petitioner desires to be certified as representative of the employees. The Petitioner alleges that the following circumstances exist and requests that the National Labor Relations Board proceed under its proper authority pursuant to Section 9 of the National Labor Relations Act.

<b>2a. Name of Employer</b> Airway LLC		<b>2b. Address(es) of Establishment(s) involved</b> (Street and number, city, State, ZIP code) 15 Clinton Avenue NY Rockville Center 11570	
<b>3a. Employer Representative - Name and Title</b> Fred Catanese Jr.		<b>3b. Address</b> (If same as 2b - state same) 15 Clinton Avenue NY Rockville Center 11570	
<b>3c. Tel. No.</b> (516) 594-4944	<b>3d. Cell No.</b>	<b>3e. Fax No.</b> (516) 594-4902	<b>3f. E-Mail Address</b> info@airwayllc.com
<b>4a. Type of Establishment</b> (Factory, mine, wholesaler, etc.)		<b>4b. Principal product or service</b>	
<b>5b. Description of Unit Involved</b> <b>Included:</b>		<b>5a. City and State where unit is located:</b> Philadelphia, PA	
<b>Excluded:</b>		<b>6a. No. of Employees in Unit:</b> 25	
		<b>6b. Do a substantial number (30% or more) of the employees in the unit wish to be represented by the Petitioner?</b> Yes <input checked="" type="radio"/> No <input type="radio"/>	

**Check One:** ☒ 7a. Request for recognition as Bargaining Representative was made on (Date) \_\_\_\_\_ and Employer declined recognition on or about \_\_\_\_\_ (Date) (If no reply received, so state).  
☐ 7b. Petitioner is currently recognized as Bargaining Representative and desires certification under the Act.

<b>8a. Name of Recognized or Certified Bargaining Agent</b> (If none, so state). 32BJ Traci C. Benjamin		<b>8b. Address</b> 1515 Market Street Suite 1000 PA Philadelphia 19102	
<b>8c. Tel No.</b> (215) 226-3600	<b>8d Cell No.</b> (215) 300-0776	<b>8e. Fax No.</b>	<b>8f. E-Mail Address</b> tbenjamin@seiu32bj.org
<b>8g. Affiliation, if any</b> SEIU		<b>8h. Date of Recognition or Certification</b> 04/13/2021	

**9. Is there now a strike or picketing at the Employer's establishment(s) involved?** No ☒ If so, approximately how many employees are participating? \_\_\_\_\_  
(Name of labor organization) \_\_\_\_\_, has picketed the Employer since (Month, Day, Year) \_\_\_\_\_.

**10. Organizations or individuals other than Petitioner and those named in items 8 and 9, which have claimed recognition as representatives and other organizations and individuals known to have a representative interest in any employees in the unit described in item 5b above.** (If none, so state)

<b>10a. Name</b>	<b>10b. Address</b>	<b>10c. Tel. No.</b>	<b>10d. Cell No.</b>
		<b>10e. Fax No.</b>	<b>10f. E-Mail Address</b>

**11. Election Details:** If the NLRB conducts an election in this matter, state your position with respect to any such election.

<b>11b. Election Date(s):</b> February 16 2021	<b>11c. Election Time(s):</b> 10 AM	<b>11d. Election Location(s):</b> mail ballot
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<b>12a. Full Name of Petitioner (including local name and number)</b> Dean DeLucia United Construction Trades & Industrial Employees (U.C.T.I.E.) Local 621	<b>12b. Address (street and number, city, state, and ZIP code)</b> 40-26 235th Street NY Douglaston 11363
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**12c. Full name of national or international labor organization of which Petitioner is an affiliate or constituent** (if none, so state)  
None

<b>12d. Tel No.</b> (718) 326-4052	<b>12e. Cell No.</b> (347) 219-7536	<b>12f. Fax No.</b> (718) 880-1995	<b>12g. E-Mail Address</b> deean.delucia@uctie.com
---------------------------------------	--	---------------------------------------	---

**13. Representative of the Petitioner who will accept service of all papers for purposes of the representation proceeding.**

<b>13a. Name and Title</b> Stephen Goldblatt Esq. Attorney Law Office of Stephen Goldblatt, PC		<b>13b. Address (street and number, city, state, and ZIP code)</b> 44 Court Street Suite 1217 NY Brooklyn 11201	
<b>13c. Tel No.</b> (917) 771-8010	<b>13d. Cell No.</b> (917) 771-8010	<b>13e. Fax No.</b>	<b>13f. E-Mail Address</b> goldblattlegal@gmail.com

**I declare that I have read the above petition and that the statements are true to the best of my knowledge and belief.**

<b>Name (Print)</b> Stephen Goldblatt Esq.	<b>Signature</b> 	<b>Title</b> Attorney	<b>Date</b> 1/13/2021 15:20:48
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**WILLFUL FALSE STATEMENTS ON THIS PETITION CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)**

**PRIVACY ACT STATEMENT**

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. § 151 et seq. The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing representation and related proceedings or litigation. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. Reg. 74942-43 (Dec. 13, 2006). The NLRB will further explain these uses upon request. Disclosure of this information to the NLRB is voluntary; however, failure to supply the information will cause the NLRB to decline to invoke its processes.



Attachment

Employees Included  
Airport Cleaners

Employees Excluded  
Supervisors, office clericals & guards

DO NOT WRITE IN THIS SPACE	
Case	Date Filed



UNITED STATES GOVERNMENT  
NATIONAL LABOR RELATIONS BOARD

REGION 4  
100 E Penn Square  
Suite 403  
Philadelphia, PA 19107

Agency Website: [www.nlrb.gov](http://www.nlrb.gov)  
Telephone: (215)597-7601  
Fax: (215)597-7658

February 4, 2021

Al DePhillips, Team Leader  
Airway LLC  
15 Clinton Avenue  
Rockville Center, NY 11570

Re: Airway LLC  
Case 04-RC-271327

Dear Mr. DePhillips:

This is to advise you that the Petitioner's request to withdraw the petition in the above case has been approved.

Very truly yours,

Thomas Goonan  
Regional Director

cc: Ian Bogaty, Esquire  
Jackson Lewis LLP  
58 S. Service Road, Suite 250  
Melville, NY 11747

Dean DeLucia, Secretary-Treasurer  
United Construction Trades & Industrial  
Employees (U.C.T.I.E.) Local 621  
40-26 235th Street  
Douglaston, NY 11363

Stephen Goldblatt, Attorney  
Law Office of Stephen Goldblatt, PC  
44 Court Street  
Suite 1217  
Brooklyn, NY 11201

Kristin Seale  
SEIU 32BJ  
1515 Market Street  
Suite 1000  
Philadelphia, PA 19102

Lyle D. Rowen, Associate General Counsel  
Local 32BJ, SEIU  
25 West 18th Street  
New York, NY 10011

UNITED STATES OF AMERICA  
NATIONAL LABOR RELATIONS BOARD  
RC PETITION

DO NOT WRITE IN THIS SPACE

Case No.

Date Filed

**INSTRUCTIONS:** Unless e-Filed using the Agency's website, [www.nlr.gov/](http://www.nlr.gov/), submit an original of this Petition to an NLRB office in the Region in which the employer concerned is located. The petition must be accompanied by both a showing of interest (see 6b below) and a certificate of service showing service on the employer and all other parties named in the petition of: (1) the petition; (2) Statement of Position form (Form NLRB-505); and (3) Description of Representation Case Procedures (Form NLRB 4812). The showing of interest should only be filed with the NLRB and should not be served on the employer or any other party.

**1. PURPOSE OF THIS PETITION: RC-CERTIFICATION OF REPRESENTATIVE** - A substantial number of employees wish to be represented for purposes of collective bargaining by Petitioner and Petitioner desires to be certified as representative of the employees. The Petitioner alleges that the following circumstances exist and requests that the National Labor Relations Board proceed under its proper authority pursuant to Section 9 of the National Labor Relations Act.

**2a. Name of Employer:**  
Prospect Airport Services

**2b. Address(es) of Establishment(s) involved (Street and number, City, State, ZIP code):**  
2130 South Wolf Road. Des Plaines, IL 60018

**3a. Employer Representative - Name and Title:**  
Suzanne Mucklow

**3b. Address (if same as 2b - state same):**  
315 Court Street - Clearwater, FL. 33756

**3c. Tel. No.**  
727-464-3354

**3d. Cell No.**

**3e. Fax No.**  
727-464-4147

**3f. E-Mail Address**  
suzanne.mucklow@prospectair.com

**4a. Type of Establishment (Factory, mine, wholesaler, etc.)**  
services

**4b. Principal Product or Service**  
cleaning & transport

**5a. City and State where unit is located:**  
Philadelphia, PA

**5b. Description of Unit Involved:**

**Included:**  
All full-time and regular part time cabin cleaners & Transporters

**Excluded:**  
clericals, guards & supervisors

**6a. Number of Employees in Unit:**  
300

**6b. Do a substantial number (30% or more) of the employees in the unit wish to be represented by the Petitioner?** ☒ Yes ☐ No

**Check One:** ☐ 7a. Request for recognition as Bargaining Representative was made on (Date) \_\_\_\_\_ and Employer declined recognition on or about (Date) \_\_\_\_\_ (If no reply received, so state).  
☐ 7b. Petitioner is currently recognized as Bargaining Representative and desires certification under the Act.

**8a. Name of Recognized or Certified Bargaining Agent (If none, so state)**  
Local 32bj

**8b. Address:**  
1515 Market Street, Philadelphia, PA

**8c. Tel. No.**  
215-300-0776

**8d. Cell No.**

**8e. Fax No.**

**8f. E-Mail Address**  
kseale@seiu32bj.org

**8g. Affiliation, if any:**  
SEIU

**8h. Date of Recognition or Certification**  
**8i. Expiration Date of Current or Most Recent Contract, if any (Month, Day, Year)** 6/15/21

**9. Is there now a strike or picketing at the Employer's establishment(s) involved?** No If so, approximately how many employees are participating? \_\_\_\_\_  
(Name of Labor Organization) \_\_\_\_\_, has picketed the Employer since (Month, Day, Year) \_\_\_\_\_

**10. Organizations or individuals other than Petitioner and those named in items 8 and 9, which have claimed recognition as representatives and other organizations and individuals known to have a representative interest in any employees in the unit described in item 5b above. (If none, so state)**  
None

**10a. Name**

**10b. Address**

**10c. Tel. No.**

**10d. Cell No.**

**10e. Fax No.**

**10f. E-Mail Address**

**11. Election Details:** If the NLRB conducts and election in this matter, state your position with respect to any such election:

**11a. Election Type:**  
☐ Manual ☒ Mail ☐ Mixed Manual/Mail

**11b. Election Date(s):**  
May 15, 2021

**11c. Election Time(s):**  
Mail

**11d. Election Location(s):**  
Mail

**12a. Full Name of Petitioner (including local name and number):**  
Local 621 UCTIE

**12b. Address (street and number, city, State and ZIP code):**  
40-26 235th Street Douglaston, NY 11363

**12c. Full name of national or international labor organization of which Petitioner is an affiliate or constituent (if none, so state):**  
None

**12d. Tel. No.**  
718-326-4052

**12e. Cell No.**

**12f. Fax No.**  
718-880-1995

**12g. E-Mail Address**  
dean.delucia@uctie.com

**13. Representative of the Petitioner who will accept service of all papers for purposes of the representation proceeding.**

**13a. Name and Title:**  
Stephen Goldblatt

**13b. Address (street and number, city, State and ZIP code):**  
44 Court Street Suite 1217 Brooklyn, NY. 11201

**13c. Tel. No.**  
917-771-8010

**13d. Cell No.**  
917-771-8010

**13e. Fax No.**

**13f. E-Mail Address**  
goldblattlegal@gmail.com

I declare that I have read the above petition and that the statements are true to the best of my knowledge and belief.

**Name (Print)**  
Stephen Goldblatt

**Signature**

**Title**  
Attorney

**Date**  
4/12/21

**WILLFUL FALSE STATEMENTS ON THIS PETITION CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)**  
**PRIVACY ACT STATEMENT**

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UNITED STATES GOVERNMENT  
NATIONAL LABOR RELATIONS BOARD

REGION 4  
100 Penn Square East  
Suite 403  
Philadelphia, PA 19107

Agency Website: [www.nlr.gov](http://www.nlr.gov)  
Telephone: (215)597-7601  
Fax: (215)597-7658

April 20, 2021

Stephen Goldblatt, Attorney  
Law Office of Stephen Goldblatt, P.C.  
44 Court Street, Suite 1217  
Brooklyn, NY 11201

Re: Prospect Airport Services  
Case 04-RC-275622

Dear Mr. Goldblatt:

The above-captioned case, petitioning for an investigation and determination of representative under Section 9(c) of the National Labor Relations Act, has been carefully investigated and considered.

**Decision to Dismiss:** As a result of the investigation, I find that further proceedings are unwarranted. The investigation disclosed that Prospect Airport Services, Inc. (the Employer) and Service Employees International Union (SEIU) Local 32BJ are parties to a three-year collective bargaining agreement (contract) that became effective on June 11, 2018. Therefore, the expiration date of the contract is June 10, 2021. The contract covers the employees encompassed by the petition in this matter.

The parties to an agreement which is approaching its expiration date are provided with a 60-day "insulated period" immediately preceding and including the expiration date in order to afford them an opportunity to negotiate and execute a new contract without the disruption of a rival petition. *Deluxe Metal Furniture*, 121 NLRB 995, 1000 (1958); *Crompton Co.*, 260 NLRB 417, 418 (1981). Petitions filed during the insulated period are dismissed, regardless of whether the contract contains an automatic renewal clause. Here, the 60-day insulated period begins on April 12 and runs through and including June 10, 2021.

There is a "window period" during which petitions may be timely filed prior to the commencement of the insulated period. In settings other than health care institutions, the window period is 90 to 60 days *prior to* [not including] the expiration date of the contract. *Deluxe Metal Furniture* at 1001. Thus, the window period in this case was from March 13 through April 11, 2021.

The instant petition was docketed on April 15, 2021, and the earliest date the Petitioner e-filed any petition with the NLRB was April 12, 2021. As the e-filing of the petition occurred during the insulated period, it is, therefore, untimely.

Accordingly, I am dismissing the petition in this matter, and the Notice of Hearing previously issued is hereby withdrawn.

***Right to Request Review:*** Pursuant to Section 102.67 of the National Labor Relations Board's Rules and Regulations, you may obtain a review of this action by filing a request with the Executive Secretary, National Labor Relations Board, 1015 Half Street SE, Washington, DC 20570-0001. A copy of the request for review must be served on each of the other parties, as well as on the undersigned, in accordance with the requirements of the Board's Rules and Regulations. The request for review must contain a complete statement of the facts and reasons on which it is based.

***Procedures for Filing Request for Review:*** Pursuant to Section 102.5 of the Board's Rules and Regulations, a request for review must be filed by electronically submitting (E-Filing) it through the Agency's web site ([www.nlrb.gov](http://www.nlrb.gov)), unless the party filing the request for review does not have access to the means for filing electronically or filing electronically would impose an undue burden. A request for review filed by means other than E-Filing must be accompanied by a statement explaining why the filing party does not have access to the means for filing electronically or filing electronically would impose an undue burden. Section 102.5(e) of the Board's Rules do not permit a request for review to be filed by facsimile transmission. A copy of the request for review must be served on each of the other parties to the proceeding, as well as on the undersigned, in accordance with the requirements of the Board's Rules and Regulations. The request for review must comply with the formatting requirements set forth in Section 102.67(i)(1) of the Board's Rules and Regulations. Detailed instructions for using the NLRB's E-Filing system can be found in the [E-Filing System User Guide](#).

A request for review must be received by the Executive Secretary of the Board in Washington, DC, by close of business (**5 p.m. Eastern Time**) on **Tuesday, May 4, 2021**, unless filed electronically. If filed electronically, it will be considered timely if the transmission of the entire document through the Agency's website is **accomplished by no later than 11:59 p.m. Eastern Time on Tuesday, May 4, 2021**.

Filing a request for review electronically may be accomplished by using the E-Filing system on the Agency's website at [www.nlrb.gov](http://www.nlrb.gov). Once the website is accessed, click on **E-File Documents**, enter the NLRB Case Number, and follow the detailed instructions. The responsibility for the receipt of the request for review rests exclusively with the sender. A failure to timely file the request for review will not be excused on the basis that the transmission could not be accomplished because the Agency's website was off line or unavailable for some other reason, absent a determination of technical failure of the site, with notice of such posted on the website.

Upon good cause shown, the Board may grant special permission for a longer period within which to file a request for review. A request for extension of time, which must also be filed electronically, should be submitted to the Executive Secretary in Washington, and a copy of such request for extension of time should be submitted to the Regional Director and to each of the other parties to this proceeding. A request for an extension of time must include a statement that a copy

has been served on the Regional Director and on each of the other parties to this proceeding in the same manner or a faster manner as that utilized in filing the request with the Board.

Any party may, within 5 business days after the last day on which the request for review must be filed, file with the Board a statement in opposition to the request for review. An opposition must be filed with the Board in Washington, DC, and a copy filed with the Regional Direction and copies served on all the other parties. The opposition must comply with the formatting requirements set forth in §102.67(i)(1). Requests for an extension of time within which to file the opposition shall be filed pursuant to §102.2(c) with the Board in Washington, DC, and a certificate of service shall accompany the requests. The Board may grant or deny the request for review without awaiting a statement in opposition. No reply to the opposition may be filed except upon special leave of the Board.

Very truly yours,



Thomas Goonan  
Regional Director

cc: Office of the Executive Secretary (by e-mail)

Suzanne Mucklow  
Prospect Airport Services  
2130 South Wolf Road  
Des Plaines, IL 60018

Matthew D. Westerman, Esquire  
Prospect Airport Services, Inc.  
310 Deerwood Lane  
Brentwood, TN 37027

Dean Delucia  
UCTIE Local 621  
40-26 235th St  
Douglaston, NY 11363

Kristin Seale  
SEIU Local 32BJ  
1515 Market Street  
Philadelphia, PA 19102

Prospect Airport Services  
315 Court St  
Clearwater, FL 33756

Brent Garren, Deputy General Counsel  
Lyle D. Rowen, Associate General  
Counsel  
Service Employees International Union,  
Local 32BJ  
25 West 18th Street  
New York, NY 10011

UNITED STATES GOVERNMENT  
NATIONAL LABOR RELATIONS BOARD

**RC PETITION**

**DO NOT WRITE IN THIS SPACE**

Case No.

05-RC-267001

Date Filed

10/2/20

**INSTRUCTIONS:** Unless e-Filed using the Agency's website, [www.nlr.gov](http://www.nlr.gov), submit an original of this Petition to an NLRB office in the Region in which the employer concerned is located. The petition must be accompanied by both a showing of interest (see 6b below) and a certificate of service showing service on the employer and all other parties named in the petition of: (1) the petition; (2) Statement of Position form (Form NLRB-505); and (3) Description of Representation Case Procedures (Form NLRB 4812). The showing of interest should only be filed with the NLRB and should not be served on the employer or any other party.

**1. PURPOSE OF THIS PETITION: RC-CERTIFICATION OF REPRESENTATIVE** - A substantial number of employees wish to be represented for purposes of collective bargaining by Petitioner and Petitioner desires to be certified as representative of the employees. The Petitioner alleges that the following circumstances exist and requests that the National Labor Relations Board proceed under its proper authority pursuant to Section 9 of the National Labor Relations Act.

**2a. Name of Employer**

The Cogar Group, Ltd

**2b. Address(es) of Establishment(s) involved (Street and number, city, State, ZIP code)**

11166 Fairfax Blvd., Suite 306  
VA Fairfax 22030-

**3a. Employer Representative - Name and Title**

Joe Cash

**3b. Address (If same as 2b - state same)**

11166 Fairfax Blvd., Suite 306  
VA Fairfax 22030-

**3c. Tel. No.**

(202) 482-6054

**3d. Cell No.**

**3e. Fax No.**

**3f. E-Mail Address**

jchase@doc.gov

**4a. Type of Establishment (Factory, mine, wholesaler, etc.)**

Security Systems & Services

**4b. Principal product or service**

Security

**5a. City and State where unit is located:**

Washington, DC

**5b. Description of Unit Involved**

**Included:** See Attached Page 2 for additional details

**Excluded:** See Attached Page 2 for additional details

**6a. No. of Employees in Unit:**

40

**6b. Do a substantial number (30% or more) of the employees in the unit wish to be represented by the Petitioner?** Yes ☒ No ☐

**Check One:**



7a. Request for recognition as Bargaining Representative was made on (Date) \_\_\_\_\_ and Employer declined recognition on or about \_\_\_\_\_ (Date) (If no reply received, so state).



7b. Petitioner is currently recognized as Bargaining Representative and desires certification under the Act.

**8a. Name of Recognized or Certified Bargaining Agent (If none, so state).**

United Government Security Officers of America

**8b. Address**

2879 Cranberry Highway  
MA East Wareham 02538-

**8c. Tel No.**

(774) 678-0936

**8d. Cell No.**

**8e. Fax No.**

**8f. E-Mail Address**

mleblanc@ugsoa.com

**8g. Affiliation, if any**

**8h. Date of Recognition or Certification**

**8i. Expiration Date of Current or Most Recent Contract, if any (Month, Day, Year)**  
10/01/2020

**9. Is there now a strike or picketing at the Employer's establishment(s) involved?** No \_\_\_\_\_ If so, approximately how many employees are participating? \_\_\_\_\_

(Name of labor organization) \_\_\_\_\_, has picketed the Employer since (Month, Day, Year) \_\_\_\_\_.

**10. Organizations or individuals other than Petitioner and those named in items 8 and 9, which have claimed recognition as representatives and other organizations and individuals known to have a representative interest in any employees in the unit described in item 5b above. (If none, so state)**

**10a. Name**

**10b. Address**

**10c. Tel. No.**

**10d. Cell No.**

**10e. Fax No.**

**10f. E-Mail Address**

**11. Election Details:** If the NLRB conducts an election in this matter, state your position with respect to any such election.

**11a. Election Type:** ☐ Manual ☒ Mail ☐ Mixed Manual/Mail

**11b. Election Date(s):**  
mail

**11c. Election Time(s):**  
mail

**11d. Election Location(s):**  
mail

**12a. Full Name of Petitioner (including local name and number)**

Chrissandra Jones  
Chrissandra Jones

**12b. Address (street and number, city, state, and ZIP code)**  
8004 Neville Place  
MD Fort Washington 20744-

**12c. Full name of national or international labor organization of which Petitioner is an affiliate or constituent (if none, so state)**  
Protective Service Officers United

**12d. Tel No.**

(202) 602-8438

**12e. Cell No.**

**12f. Fax No.**

**12g. E-Mail Address**  
chrissandrajones@psosunited.com

**13. Representative of the Petitioner who will accept service of all papers for purposes of the representation proceeding.**

**13a. Name and Title**

**13b. Address (street and number, city, state, and ZIP code)**

**13c. Tel No.**

**13d. Cell No.**

**13e. Fax No.**

**13f. E-Mail Address**

**I declare that I have read the above petition and that the statements are true to the best of my knowledge and belief.**

**Name (Print)**

Chrissandra Jones

**Signature**

Chrissandra Jones

**Title**

President

**Date**

10/2/2020 09:52:44

**WILLFUL FALSE STATEMENTS ON THIS PETITION CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)**

**PRIVACY ACT STATEMENT**

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Attachment

DO NOT WRITE IN THIS SPACE	
Case 05-RC-267001	Date Filed 10/2/20

**Employees Included**

All Full & Part- Time Guards employed by the employer at the Department of Commerce Site at 1401 Constitution Ave NW, Washington, DC 20230

**Employees Excluded**

Office clericals, professional employees, managers, and supervisors as defined by the ACT



UNITED STATES GOVERNMENT  
NATIONAL LABOR RELATIONS BOARD

REGION 5  
BANK OF AMERICA CENTER, TOWER II  
100 S. CHARLES STREET, STE 600  
BALTIMORE, MD 21201

Agency Website: [www.nlrb.gov](http://www.nlrb.gov)  
Telephone: (410)962-2822  
Fax: (410)962-2198

October 9, 2020

Mr. Joe Cash  
The Cogar Group, Ltd  
11166 Fairfax Blvd., Suite 306  
Fairfax, VA 22030

Re: The Cogar Group, Ltd  
Case 05-RC-267001

Dear Mr. Cash:

This is to advise you that the Petitioner's request to withdraw the petition in the above case has been approved.

Very truly yours,

*/s/ Sean R. Marshall*

Sean R. Marshall  
Regional Director

cc: Mr. Michael LeBlanc  
United Government Security  
Officers of America  
2879 Cranberry Highway  
East Wareham, MA 02538

Ms. Chrissandra Jones, President  
Protective Service Officers United  
8004 Neville Place  
Ft. Washington, MD 20744

Mr. Kent Emery, President  
Governed United Security  
Professionals (GUSP)  
5602 Baltimore National Pike, Suite 607  
Catonsville, MD 21228-1409

UNITED STATES GOVERNMENT  
NATIONAL LABOR RELATIONS BOARD

**RC PETITION**

**DO NOT WRITE IN THIS SPACE**

Case No.

05-RC-267669

Date Filed

10-15-2020

**INSTRUCTIONS:** Unless e-Filed using the Agency's website, [www.nlr.gov](http://www.nlr.gov), submit an original of this Petition to an NLRB office in the Region in which the employer concerned is located. The petition must be accompanied by both a showing of interest (see 6b below) and a certificate of service showing service on the employer and all other parties named in the petition of: (1) the petition; (2) Statement of Position form (Form NLRB-505); and (3) Description of Representation Case Procedures (Form NLRB 4812). The showing of interest should only be filed with the NLRB and should not be served on the employer or any other party.

**1. PURPOSE OF THIS PETITION: RC-CERTIFICATION OF REPRESENTATIVE** - A substantial number of employees wish to be represented for purposes of collective bargaining by Petitioner and Petitioner desires to be certified as representative of the employees. The Petitioner alleges that the following circumstances exist and requests that the National Labor Relations Board proceed under its proper authority pursuant to Section 9 of the National Labor Relations Act.

**2a. Name of Employer**  
Golden Services LLC

**2b. Address(es) of Establishment(s) involved (Street and number, city, State, ZIP code)**  
72 Mitchell Road  
TN Oak Ridge 37830-

**3a. Employer Representative - Name and Title**  
Michele Kyker

**3b. Address (If same as 2b - state same)**  
72 Mitchell Road  
TN Oak Ridge 37830-

**3c. Tel. No.**  
(865) 294-5659

**3d. Cell No.**  
(865) 804-1618

**3e. Fax No.**

**3f. E-Mail Address**  
mkyker@goldsvcs.com

**4a. Type of Establishment (Factory, mine, wholesaler, etc.)**  
Security Systems & Services

**4b. Principal product or service**  
Security Service

**5a. City and State where unit is located:**  
Washington, DC

**5b. Description of Unit Involved**

**Included:** See Attached Page 2 for additional details

**Excluded:** See Attached Page 2 for additional details

**6a. No. of Employees in Unit:**  
56

**6b. Do a substantial number (30% or more) of the employees in the unit wish to be represented by the Petitioner?** Yes ☒ No ☐

**Check One:** ☐ 7a. Request for recognition as Bargaining Representative was made on (Date) \_\_\_\_\_ and Employer declined recognition on or about \_\_\_\_\_ (Date) (If no reply received, so state).

☐ 7b. Petitioner is currently recognized as Bargaining Representative and desires certification under the Act.

**8a. Name of Recognized or Certified Bargaining Agent (If none, so state).**  
Governed United Security Professionals Kent Emery

**8b. Address**  
5602 Baltimore National Pike Suite 607  
MD Baltimore 21228-

**8c. Tel No.**  
(443) 304-2018

**8d. Cell No.**

**8e. Fax No.**

**8f. E-Mail Address**  
issues@guspu.com

**8g. Affiliation, if any**

**8h. Date of Recognition or Certification**

**8i. Expiration Date of Current or Most Recent Contract, if any (Month, Day, Year)**  
10/01/2020

**9. Is there now a strike or picketing at the Employer's establishment(s) involved?** \_\_\_\_\_ If so, approximately how many employees are participating? \_\_\_\_\_  
(Name of labor organization) \_\_\_\_\_, has picketed the Employer since (Month, Day, Year) \_\_\_\_\_.

**10. Organizations or individuals other than Petitioner and those named in items 8 and 9, which have claimed recognition as representatives and other organizations and individuals known to have a representative interest in any employees in the unit described in item 5b above. (If none, so state)**

**10a. Name**

**10b. Address**

**10c. Tel. No.**

**10d. Cell No.**

**10e. Fax No.**

**10f. E-Mail Address**

**11. Election Details:** If the NLRB conducts an election in this matter, state your position with respect to any such election.

**11a. Election Type:** ☐ Manual ☒ Mail ☐ Mixed Manual/Mail

**11b. Election Date(s):**  
10/28/2020

**11c. Election Time(s):**  
7:30 a.m.

**11d. Election Location(s):**  
Mail

**12a. Full Name of Petitioner (including local name and number)**  
Sephheria Sprattley  
Union Rights for Security Officers (URSO)

**12b. Address (street and number, city, state, and ZIP code)**  
5166 7th Street, NE  
WA DC 20011-

**12c. Full name of national or international labor organization of which Petitioner is an affiliate or constituent (if none, so state)**

**12d. Tel No.**  
(202) 306-0060

**12e. Cell No.**  
(202) 320-6898

**12f. Fax No.**  
(301) 505-3656

**12g. E-Mail Address**  
ssprattley1234@gmail.com

**13. Representative of the Petitioner who will accept service of all papers for purposes of the representation proceeding.**

**13a. Name and Title**

**13b. Address (street and number, city, state, and ZIP code)**

**13c. Tel No.**

**13d. Cell No.**

**13e. Fax No.**

**13f. E-Mail Address**

**I declare that I have read the above petition and that the statements are true to the best of my knowledge and belief.**

**Name (Print)**  
Sephheria Sprattley

**Signature**  
Sephheria Sprattley

**Title**  
Union Representative

**Date**  
10/14/2020 20:55:47

**WILLFUL FALSE STATEMENTS ON THIS PETITION CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)**

**PRIVACY ACT STATEMENT**

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. § 151 et seq. The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing representation and related proceedings or litigation. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. Reg. 74942-43 (Dec. 13, 2006). The NLRB will further explain these uses upon request. Disclosure of this information to the NLRB is voluntary; however, failure to supply the information will cause the NLRB to decline to invoke its processes.

Attachment

DO NOT WRITE IN THIS SPACE	
Case 05-RC-267669	Date Filed 10-15-2020

#### Employees Included

All full-time and regular part-time security officers employed by the Employer at the HUD Building located 451 7th Street SW, Washington DC 20410

#### Employees Excluded

All officer clerical employees, professional employees and supervisors as defined by the Act.



**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 5**

GOLDEN SVCS, LLC,<sup>1</sup>

Employer,

and

Case 05-RC-267669

UNION RIGHTS FOR SECURITY  
OFFICERS (URSO),

Petitioner,

and

GOVERNED UNITED SECURITY  
PROFESSIONALS (GUSP),

Intervenor,

and

INTERNATIONAL UNION, SECURITY, POLICE  
AND FIRE PROFESSIONALS OF AMERICA  
(SPFPA),

Intervenor.

**DECISION AND ORDER**

Union Rights for Security Officers (URSO) (“the Petitioner”) filed the petition herein with the National Labor Relations Board (“the Board”) under Section 9(c) of the National Labor Relations Act, as amended (“the Act”), seeking to represent a group of employees employed by Golden SVCS, LLC (“the Employer”). The Employer is engaged in the business of providing security services to the United States Government.

A hearing was held via videoconference on November 5, 2020 before a hearing officer of the Board.<sup>2</sup> As the parties stipulated, I find that the agreed upon unit set forth below (“the Unit”) is appropriate for the purposes of collective bargaining:

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<sup>1</sup> The Employer’s name appears as amended by stipulation of the parties.

<sup>2</sup> Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated the undersigned its authority in this proceeding. Upon the entire record in this proceeding, I find:

1. The hearing officer’s rulings, made at the hearing, are free from prejudicial error and are hereby affirmed.

**Included:** All full-time and regular part-time security officers employed by the Employer at the U.S. Department of Housing and Urban Development, currently located at 451 7<sup>th</sup> Street SW, Washington, DC 20410 and 425 3<sup>rd</sup> Street SW, Washington, DC 20024.

**Excluded:** All office clerical employees, professional employees and supervisors as defined by the Act.

Furthermore, there is no dispute, and I find, that the employees in the petitioned-for unit are guards under Section 9(b)(3) of the Act. Additionally, I find, as stipulated by the parties, that the Petitioner, the Governed United Security Professionals (GUSP) (“Intervenor GUSP”), and the International Union, Security, Police and Fire Professionals of America (SPFPA) (“Intervenor SPFPA”) are each qualified to represent the unit described in the petition and herein within the meaning of Section 9(b)(3) of the Act.

The issues involved in this proceeding surround whether the instant petition is barred by an agreement executed by the Employer and Intervenor GUSP that covers the petitioned-for employees. Intervenor GUSP contends that the agreement is effective and currently in-force and thus bars the instant petition. In contrast, Petitioner argues that the agreement is not a bar to the petition because, at the time the agreement was executed, Intervenor GUSP did not enjoy majority support amongst the petitioned-for employees.<sup>3</sup> Intervenor SPFPA additionally argues that the agreement contains an unlawful union-security clause, and thus the contract cannot serve as a bar. Finally, Intervenor SPFPA argues that it is inappropriate for me to consider the contract bar issue because neither the Employer nor Intervenor GUSP filed a statement of position or responsive statement of position raising the contract bar issue.<sup>4</sup> The parties provided their

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2. The parties stipulated, and I find, that the Employer is a limited liability company with an office and place of business in Oak Ridge, Tennessee, and is engaged in the business of providing security services at U.S. Department of Housing and Urban Development currently located at 451 7<sup>th</sup> Street SW, Washington, DC 20410 and 425 3<sup>rd</sup> Street SW, Washington, DC 20024. In conducting its operations during the 12-month period ending September 30, 2020, the Employer provided services valued in excess of \$50,000 directly to customers located outside the State of Tennessee. During that same period of time, the Employer has conducted its operations within Washington, D.C.
  3. I further find, as also stipulated by the parties, that the Employer is engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act, and it will effectuate the purposes of the Act to assert jurisdiction herein.
  4. The parties additionally stipulated, and I find, that the Petitioner and the Intervenors are all labor organizations within the meaning of the Act.
  5. Petitioner is seeking to represent the employees in the unit described in the petition and herein, but the Employer declines to recognize Petitioner as the collective-bargaining representative of those employees.
  6. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

<sup>3</sup> The Employer does not take a position on whether the agreement bars the instant petition.

<sup>4</sup> As will be discussed below, I find that the contract bar issue was appropriately raised and is before me for resolution. Additionally, at hearing, pursuant to my direction, Intervenor GUSP was prevented from raising any issue, cross-examining any witness concerning any issue, and presenting argument concerning any issue because it failed to file a statement of position pursuant to Section 102.66(d) of the Board’s Rules and Regulations. I hereby affirm this ruling made on the record.

respective positions on the record, and while they were permitted to file post-hearing briefs, no briefs were filed.

For the reasons set forth below, and in accordance with extent legal authority, I find that the contract bar issue was appropriately raised, the agreement is valid and does not contain an illegal union-security clause, and the Petitioner's majority-status argument is inappropriate to be decided in this proceeding. Consequently, I find that the agreement serves to bar the processing of this petition. Accordingly, I dismiss the petition.

## **I. FACTUAL OVERVIEW**

The Employer employs approximately 78 employees in the petitioned-for unit, all of whom work at two U.S. Department of Housing and Urban Development ("HUD") buildings in Washington, DC. On February 15, 2019, Watkins Security Agency of DC, Inc. ("Watkins") entered into a collective-bargaining agreement ("Agreement") with Intervenor GUSP, effective through February 14, 2022, covering the petitioned-for employees who worked at the same two HUD buildings where they are currently staffed for the Employer. In about April 2020,<sup>5</sup> the Employer was awarded the prime contract to provide the services that were, at that time, being provided by Watkins at the two HUD locations.

Following its award of the aforementioned prime contract, the Employer and Intervenor GUSP began negotiations. The negotiations culminated in a bridge agreement ("Bridge Agreement"), entitled Agreement to Assume Collective Bargaining Agreement, which was fully executed on August 10. In the Bridge Agreement, the Employer, among other things, recognized Intervenor GUSP as the bargaining agent for the Unit, and agreed to assume the Agreement subject to modifications contained within the Bridge Agreement.

The Agreement contains a union-security provision, relevant sections of which are quoted below:

### **ARTICLE II: MEMBERSHIP AND DUES CHECK-OFF**

#### **Section 1: Definition**

- a. All Employees who are members of the Union on the effective date of this Agreement, or voluntarily join hereafter, shall maintain their membership or satisfy the financial obligations set by the Union in accordance with the applicable law during the term of this Agreement as a condition of continued employment. All Employees covered by this Agreement who are not members of the Union and choose not to become members of the Union shall, as a condition of continued employment, pay to the Union an agency fee as established by the Union, consistent with applicable law.

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<sup>5</sup> Hereinafter, all dates occurred in 2020, unless otherwise noted.

- b. All Employees hired after this effective date of this Agreement shall, within ninety (90) working days, become members or agency fee payers as a condition of continued employment for the duration of this Agreement, consistent with applicable law.
- c. The Employer shall be obligated under this Article to terminate the employment of any Employee by reason of his/her failure to comply with Section (a) above upon receipt of a thirty (30) days advance written request from the Union, provided that, upon receipt of such written request by the Employer, the Employee shall have fourteen (14) days to tender the amounts owed and thereby avoid termination of his/her employment and provided further that the Union has provided the Employer with written proof that it has complied with its legal obligations concerning notification to the Employee of the delinquency and notification to the Employee of his or her statutory rights relating to union security, including subsection (d) below, unless otherwise provided by applicable law.
- d. An Employee who elects not to become a member of the Union or maintain membership in the Union during the term of the Agreement will pay an agency fee to the Union rather than pay the dues amount. Such agency fee shall reflect an amount that is proportionately commensurate with the costs to the Union of collective bargaining and contract administration and Union financial core fees, as defined by the U.S. Supreme Court in NLRB v. General Motors, 373 U.S. 734 and Beck v. Communications Workers of America, 487 U.S. 735.

The modifications to the Agreement listed in the Bridge Agreement did not modify the union-security provision quoted in relevant part above.

The Employer began operations pursuant to the prime contract on August 1. At the time that it began operations, the record reflects that the Employer employed 47 employees in the Unit, 16 of which were formerly employed by Watkins. As of the hearing date, the Employer employs approximately 78 employees in the Unit, 27 of which were formerly employed by Watkins.

## **II. POSITIONS OF THE PARTIES**

The Petitioner maintains that the Agreement cannot act as a bar to the processing of this petition because, at the time the Agreement was assumed by the Employer, Intervenor GUSP did not have majority support of the Unit. In support of Petitioner's position, the record reflects that, at the time it commenced operations, only 16 of 47 employees in the Unit were employed by the predecessor, Watkins. As of the date of the hearing, the Unit is comprised of approximately 78 employees, only 27 of which were formerly employed by Watkins. Because the Unit has never

been comprised of a majority of the predecessor's employees, as a consequence Intervenor GUSP has never enjoyed majority support amongst the Unit. Thus, Petitioner argues the Agreement is not valid and does not bar this petition.

In addition to the arguments made by Petitioner, Intervenor SPFPA raises two challenges to the bar status of the Agreement. To begin with, Intervenor SPFPA contends that the union-security clause—quoted in relevant part above—illegally fails to provide non-member incumbent employees (employed at the time the Agreement became effective) the statutorily required 30-day grace period. Thus, because the Agreement contains an illegal union-security clause, the Agreement cannot serve as a bar to a petition. Second, Intervenor SPFPA asserts that it is inappropriate for me to even consider the contract bar issue, and the issue is even precluded from being raised, because neither the Employer nor Intervenor GUSP raised the contract bar issue in either a statement of position or a responsive statement of position.

Finally, Intervenor GUSP argues that the Agreement does bar the petition. In support of its position, Intervenor GUSP maintains that it had achieved majority support at the time the Agreement was assumed by the Employer, and the Bridge Agreement was executed in a timely manner. Thus, it argues, the Agreement bars this petition.

### III. APPLICABLE BOARD LAW

The Board's well-settled contract bar doctrine attempts to balance often-competing aims of employee free choice and industrial stability. See, e.g. *Seton Medical Center*, 317 NLRB 87, 88 (1995). When a petition is filed for a representation election among a group of employees who are alleged to be covered by a collective-bargaining agreement, the Board must decide whether the agreement meets certain requirements such that it operates to serve as a contractual bar to the further processing of that petition. See *Hexton Furniture Co.*, 111 NLRB 342 (1955). In order to act as a bar, a collective-bargaining agreement must contain substantial terms and conditions of employment to which parties can look for guidance in resolving day-to-day problems. *Appalachian Shale Products Co.*, 121 NLRB 1160 (198). The burden of proving that a contract is a bar is on the party asserting the doctrine. *Roosevelt Memorial Park, Inc.*, 187 NLRB 517 (1970).

An unlawful union-security clause in an otherwise in-force collective bargaining agreement will render that agreement incapable of barring a representation petition. "A clearly unlawful union-security provision for this purpose is one which by its terms *clearly and unequivocally* goes beyond the limited form of union-security permitted by Section 8(a)(3) of the Act, and is therefore incapable of a lawful interpretation." *Paragon Products Corp.*, 134 NLRB 662, 666 (1961)(emphasis added).<sup>6</sup> Unlawful union-security provisions include those which

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<sup>6</sup> Section 8(a)(3) of the Act, in relevant part, states: "[t]hat nothing in this Act [subchapter], or in any other statute of the United States, shall preclude an employer from making an agreement with a labor organization . . . to require as a condition of employment membership therein on or after the thirtieth day following the beginning of such employment or the effective date of such agreement, which is the later . . ." 29 U.S.C. § 158(a)(3).

“specifically withhold from incumbent nonmembers and/or new employees the statutory 30-day grace period to comply with an otherwise-lawful union security clause (see Section 8(a)(3) of the Act)”. *Paragon Products Corp.*, 134 NLRB at 666. Moreover, a contract entered into in violation of Section 8(a)(2) of the Act is not a bar to a petition. *Carlson Furniture Industries, Inc.*, 157 NLRB 851 (1966).

Importantly, the union-security clause must be clearly unlawful, as “[c]ontracts containing ambiguous though not clearly unlawful union-security provisions will bar representation proceedings in the absence of a determination of illegality as to the particular provision involved by the Board or a Federal court pursuant to an unfair labor practice proceeding.” *Paragon Products Corp.*, 134 NLRB at 667. Thus, extrinsic evidence cannot be used to establish the illegality of the union-security provision—“[n]o testimony and no evidence will be admissible in a representation proceeding, where the testimony or evidence is only relevant to the question of the practice under a contract urged as a bar to the proceeding.” *Id.*

Finally, established Board policy dictates that unfair labor practice allegations are not properly litigable in a representation proceeding. In several cases where the bar status of a collective-bargaining agreement turned on whether the agreement was entered into in violation of Sections 8(a)(2), 8(b)(1)(A), and 8(b)(2), the Board found that the representation case was not the appropriate venue for making such a determination, but instead those issues needed to be properly litigated in an unfair labor practice proceeding. See *Town & Country*, 194 NLRB 1135, 1135-1136 (1972); *Mistletoe Express Service*, 268 NLRB 1245, 1247 (1984).

#### IV. ANALYSIS

1. I am permitted to consider the contract bar issue raised in this proceeding.

According to Section 102.64(a) of the Board’s Rules and Regulations (“Rules and Regulations”), “[t]he primary purpose of a hearing conducted under Section 9(c) is to determine if a question of representation exists.” “A question of representation exists if a proper petition has been filed concerning a unit appropriate for the purpose of collective bargaining or concerning a unit in which an individual or labor organization has been certified or is being currently recognized by the employer as the bargaining representative.” *Id.* Furthermore, “it shall be the duty of the Hearing Officer to inquire fully into all matters and issues necessary to obtain a fully and complete record upon which the board or the Regional Director may discharge their duties under Section 9(c) of the Act”, subject to the provisions of Section 102.66. *Id.* at Section 102.64(b). At hearing, even though the Rules and Regulations proscribe a Hearing Officer from receiving evidence concerning any issue as to which parties have not taken adverse positions, according to Section 102.66(b), that proscription does not “limit the Regional Director’s discretion to direct the receipt of evidence concerning any issue . . . as to which the Regional Director determines that record evidence is necessary.”

I find that the contract bar issue was appropriately raised as an issue in this proceeding, parties have taken adverse positions with respect to that issue, and it is within my duties as the



Regional Director to make a determination as to that issue. In its statement of position, the Employer remarked that it would not take a position as to whether the Agreement barred this petition, which on its face shows that it covers the petitioned-for unit; by making that statement and attaching the Agreement to its statement of position, the Employer certainly raised as an issue whether this petition is barred by the Agreement. Moreover, the Petitioner filed a responsive statement of position challenging whether there is a bar to this election. While Petitioner claims there is no dispute regarding whether this petition is barred, Petitioner raised a substantive challenge to the Agreement's bar status, i.e. that the Employer did not employ a majority of the predecessor's workforce, thus questioning the validity of the Agreement. Petitioner cannot rightfully claim that there is no dispute as to whether the Agreement bars this petition when it is levying a substantive challenge as to why the Agreement does not bar the petition.

I find that the issue as to whether the Agreement bars further processing of this petition has been properly raised, and as noted above, the parties take adverse positions on this issue. It is within my right, pursuant to Section 102.6(d) of the Rules and Regulations, to direct that evidence be taken regarding this issue. Consequently, I conclude that it is not only appropriate for me to consider the bar status of the Agreement, I am required to resolve this issue.

2. The Agreement does not contain an union-security clause that is clearly unlawful.

As extent Board law requires, I must examine the terms of the Agreement "as they appear within the four corners of the instrument itself" in assessing whether it retains its status as a bar to the instant petition. *Jet-Pak Corporation*, 231 NLRB 552, 553 (1977). There is no contention that the Agreement, outside of the challenges raised above, is defective or does not conform to the Board's requirements that define a lawful contract (i.e. that the Agreement does not contain substantial terms and conditions of employment, etc.).<sup>7</sup> Thus, in examining the Agreement, the issue raised by Intervenor SPFPA for me to decide is whether the Agreement's union-security clause withholds from incumbent non-member employees the statutory 30-day grace period before they can be subject to the clause. After careful review of the Agreement, the record, and extent legal authority, I find that the Agreement does not contain a union-security clause that is so clearly unlawful as to render the Agreement incapable of serving as a bar.

According to Intervenor SPFPA, the Agreement's union-security clause does not provide incumbent non-member employees and who choose not to become members of Intervenor GUSP, the 30-day grace period that is required by the Act with respect to enforcing the union security provision on employees. In other words, employees who were employed as of the

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<sup>7</sup> The Agreement requires members of Intervenor GUSP at the time the contract became effective, and those employees that voluntarily join thereafter, to maintain their membership or satisfy the financial obligations set by Intervenor GUSP in accordance with the applicable law as a condition of continued employment. Further, the Agreement affords employees hired after the effective date of the contract a 90-working-day grace period prior to the union-security provision being applied to them. No party to this proceeding has challenged these sections, and I find that these portions of the union-security provision do not run afoul of the Act.

effective date of the Agreement and who were not members of Intervenor GUSP or who chose not to become a member, are not afforded the requisite 30-day grace period. Therefore, according to Intervenor SPFPA, because the Agreement contains an unlawful union-security clause, it loses its bar status to block further processing of this petition. For the reasons that follow, I do not agree.

According to Article II, Section 1(a) of the Agreement, “[a]ll employees covered by this Agreement who are not members of [Intervenor GUSP] and choose not to become members of [Intervenor GUSP] shall, as a condition of continued employment, pay to [Intervenor GUSP] an agency fee as established by [Intervenor GUSP], consistent with applicable law.” I recognize that the Agreement does not detail a specific grace period within this subsection, during which Section 1(a) would not apply to incumbent employees who are not members of Intervenor GUSP and who choose not to become members. However, failing to enumerate a specific grace period within that subsection of Article II, Section 1 does not equate to “specifically withhold[ing]” the statutory grace period as proscribed by law. See *Paragon Products Corp.*, supra.

Article II, Section 1(c) directs the Employer to terminate an employee who does not comply with the requirements of Section 1(a) only after Intervenor GUSP has provided the Employer with a 30-days advance written request to terminate the non-compliant employee. In effect, then, incumbent non-member employees and those that chose not to join Intervenor GUSP were not subject to the union-security provision—at the earliest—until after the passing of 30 days following the effective date of the Agreement, because a 30-day advanced written notice is required before the Employer can terminate a non-compliant employee. While Article II, Section 1(a) may not specifically detail a grace period prior to which the union-security provision would not apply to non-member employees, I find, for the foregoing reasons, that the Agreement does not “specifically withhold” the statutory 30-day grace period.

*Mountaire Farms, Inc.*, Case 05-RD-256888, Decision and Direction of Election (April 8, 2020),<sup>8</sup> where I found that the involved union-security clause was illegal and could not serve as a bar, serves as a useful example to highlight the distinction between a union-security clause that specifically withholds the statutorily required grace period and one, such as the clause in the Agreement in this case, that does not. In *Mountaire*, I found that the involved union-security clause was incapable of a lawful interpretation, and facially invalid, because it specifically withheld from nonmember incumbent employees the statutorily mandated 30-day grace period. The union-security clause in *Mountaire* required all employees who were not members of the involved union as of the execution date of the contract, to become union members on or after the thirty-first day *following the beginning of their employment*. Thus, for any non-member incumbent employees who began their employment prior to the execution date of the contract, the 31st day following the beginning of their employment—after which they would be subject to the union-security clause—would occur prior to the finish of the statutory 30-day grace period, which would end 30 days following the execution of the agreement. For this reason, I found that

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<sup>8</sup> This matter is currently pending before the Board on a request for review and the Board’s subsequent notice and invitation to file briefs. See *Mountaire Farms, Inc.*, unpublished opinion, 2020 WL 3840342 (2020).

the union-security clause clearly and specifically withheld the statutorily required 30-day grace period.

In contrast, the union-security clause in the Agreement here is capable of a lawful interpretation—as illustrated above—as it does not specifically withhold the statutory 30-day grace period. While Intervenor SPFPA is right that the grace period is not detailed in Article II, Section 1(a), a reading of the entire union-security provision shows nonmember incumbent employees are not subject to the provisions of Section 1(a) until a 30-days advance written request is made to the Employer, and thus are afforded a 30-day grace period to comply with the union-security provisions.

I find that the union-security provision in the Agreement is capable of a lawful interpretation, and at worst is ambiguous. As the Board has said, however, “[c]ontracts containing ambiguous though not clearly unlawful union-security provisions will bar representation proceedings in the absence of a determination of illegality as to the particular provision involved by the Board or a Federal court pursuant to an unfair labor practice proceeding.” *Paragon Products Corp.*, 134 NLRB at 667. There is no evidence in the record that the Board or a Federal court has found this union-security clause to be unlawful. An ambiguous, or not clearly unlawful, union-security clause does not remove as a bar to a petition an otherwise lawful and valid collective-bargaining agreement.

For the foregoing reasons, I find that the union-security clause in the Agreement is not clearly unlawful, and does not prevent the Agreement from acting as a bar to this petition.

3. Petitioner’s majority-status argument is not appropriate for determination in this proceeding and must be denied.

As noted above, Petitioner argues, with support from Intervenor SPFPA, that the record here establishes that Intervenor GUSP did not enjoy majority support at the time the Employer and Intervenor GUSP entered into the Bridge Agreement. According to Petitioner, the Employer admits that at the time it began operations on August 1, a majority of the employees employed in the Unit were not formerly employed by the predecessor, Watkins. As such, Intervenor GUSP did not enjoy majority support amongst Unit employees, and thus the Agreement was not appropriately entered into and cannot serve as a bar to this petition. While I acknowledge that the record reflects that the Employer does not now, nor at any time since beginning operations, employ as a majority of its Unit employees that worked for Watkins, I must deny the Petitioner’s challenge for the reasons that follow.

It is established Board policy “that unfair labor practice allegations are not properly litigable in a representation proceeding.” *Town & Country*, 194 NLRB at 1136. In *Town & Country*, the Board was tasked with deciding whether a collective-bargaining agreement could serve to bar a petition for representation. The petitioner in that case argued that the agreement could not serve as a bar because it was entered into in violation of Section 8(a)(2) and 8(b)(1)(A)

and 8(b)(2). *Id.* In addition to making that argument in the representation proceeding, the petitioner also filed unfair labor practice charges making the same allegations. According to the Board, “the contract between the Employer and the Intervenor constitutes a bar to this proceeding unless the Employer’s recognition of the Intervenor as the collective-bargaining agent was itself unlawful and a violation of Section 8(a)(2) and 8(b)(1)(A) and (2) of the Act.” *Id.* It continued, “[t]o make such a determination in this case would be contrary to established Board policy that unfair labor practice allegations are not properly litigable in a representation proceeding. A party asserting such allegations may litigate them only in an unfair labor practice proceeding designed to adjudicate such matters.” *Id.* Consequently, the Board denied the petitioner’s request to proceed, and remanded the case to the Regional Director to be held in abeyance until the unfair labor practice charges were resolved. *Id.*

Likewise, in *Mistletoe Express Service*, 268 NLRB 1245 (1984), the Board also declined to resolve, in a representation proceeding, allegations that should have been adjudicated in an unfair labor practice proceeding. As in *Town & Country*, the Board was presented with a collective-bargaining agreement that “may constitute a bar to the representation case proceeding unless the Employer and the Intervenor have engaged in conduct violative of Section 8(a)(1) and (2) and Section 8(b)(1)(A) of the Act.” *Mistletoe Express Service*, 268 NLRB at 1247. However, petitioner had also filed pending unfair labor practice charges alleging that the employer in that case had provided unlawful assistance to the intervenor, that it granted recognition to the intervenor at a time that the intervenor did not represent a majority of unit employees, and that the actions of both the employer and the intervenor violated Sections 8(a)(1) and (2) and 8(b)(1)(A). *Id.* Accordingly, the Board found that petitioner must litigate the underlying allegations in the appropriate venue—the unfair labor practice proceeding—and as such declined to resolve those issues in the representation case proceeding. *Id.* As it did in *Town & Country*, the Board denied the petitioner’s request to proceed, and remanded the case to the Regional Director to be held in abeyance until the unfair labor practice charges were resolved. *Id.*

In this case, the Petitioner’s argument that the Agreement does not bar the instant petition because the Intervenor GUSP did not enjoy majority support amongst Unit employees at the time the Agreement was entered into, and at the time the Employer began operations, amounts to allegations that the Employer and Intervenor GUSP violated Sections 8(a)(2), 8(b)(1)(A) and (8)(b)(2), respectively. The impact of the Petitioner’s allegations are that the Employer unlawfully granted recognition to Intervenor GUSP at a time when it did not enjoy majority support. These are allegations that, if proven true, would result in findings that the Employer and Intervenor GUSP violated Sections 8(a)(2), 8(b)(1)(A) and 8(b)(2), respectively. Indeed, Petitioner’s arguments amounts to a challenge to the validity of the Agreement because it was entered into by the Employer and Intervenor GUSP at a time when Intervenor GUSP was not the majority representative of the Unit, and is thus invalid. Extant law requires these allegations to be pursued and litigated in an unfair labor practice proceeding, not in this representation proceeding.

As the allegations that the Employer and Intervenor GUSP entered into the Bridge Agreement at a time when Intervenor GUSP did not enjoy majority support amongst Unit employees are not properly before me, I must deny Petitioner's challenge to the bar status of the Agreement on those grounds.<sup>9</sup>

## V. CONCLUSION AND ORDER

Based on the record in front of me, as discussed in detail above, I conclude that the evidence supports a finding that Intervenor GUSP has met its burden in establishing that the Agreement acts as a bar to further processing this petition. Accordingly, it is hereby ordered that the petition in this matter is dismissed.

## RIGHT TO REQUEST REVIEW

Pursuant to Section 102.67(c) of the Board's Rules and Regulations you may obtain a request for review of this Decision by filing a request with Executive Secretary of the National Labor Relations Board. The request for review must conform to the requirements of Section 102.67 (d) and (e) of the Board's Rules and Regulations and must be filed by **December 7, 2020**.

Pursuant to Section 102.5(c) of the Board's Rules and Regulations, a request for review must be filed by electronically submitting (E-Filing) it through the Agency's web site ([www.nlr.gov](http://www.nlr.gov)), unless the party filing the request for review does not have access to the means for filing electronically or filing electronically would impose an undue burden.<sup>10</sup> A request for review may be E-Filed through the Agency's website but may not be filed by facsimile. To E-File the request for review, go to [www.nlr.gov](http://www.nlr.gov), select E-File Documents, enter the NLRB Case

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<sup>9</sup> In *Town & Country* and *Mistletoe Express Service*, the Board remanded the petitions to the respective Regional Directors to hold the matters in abeyance pending resolution of the contemporaneously filed unfair labor practice charges. Here, there is no evidence that unfair labor practice charges have been filed against the Employer or Intervenor GUSP, thus this matter cannot be held in abeyance pending resolution of the same. However, should future charges be filed against the Employer or Intervenor GUSP challenging the lawfulness of the bargaining relationship, and those charges result in the Agreement being found invalid and unlawful, the challenge to the Agreement's bar status can be appropriately raised in a representation proceeding at that time.

<sup>10</sup> On October 21, 2019, the General Counsel (GC) issued Memorandum GC 20-01, informing the public that Section 102.5(c) of the Board's Rules and Regulations mandates the use of the E-filing system for the submission of documents by parties in connection with the unfair labor practice or representation cases processed in Regional offices. The E-Filing requirement went into immediate effect on October 21, 2019, and the 90-day grace period that was put into place expired on January 21, 2020. Parties who do not have necessary access to the Agency's E-Filing system may provide a statement explaining the circumstances, or why requiring them to E-File would impose an undue burden.

Number, and follow the detailed instructions. A party filing a request for review must serve a copy of the request on the other parties and file a copy with the Regional Director. A certificate of service must be filed with the Board together with the request for review.

Issued at Baltimore, Maryland this 20th day of November, 2020.

(SEAL)

/s/ Sean R. Marshall

Sean R. Marshall, Regional Director  
National Labor Relations Board, Region 05  
Bank of America Center, Tower II  
100 S. Charles Street, Ste. 600  
Baltimore, MD 21201



UNITED STATES OF AMERICA  
NATIONAL LABOR RELATIONS BOARD  
RC PETITION

DO NOT WRITE IN THIS SPACE

Case No.

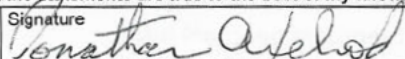
05-RC-268580

Date Filed

11-4-2020

**INSTRUCTIONS:** Unless e-Filed using the Agency's website, [www.nlrb.gov/](http://www.nlrb.gov/), submit an original of this Petition to an NLRB office in the Region in which the employer concerned is located. The petition must be accompanied by both a showing of interest (see 6b below) and a certificate of service showing service on the employer and all other parties named in the petition of: (1) the petition; (2) Statement of Position form (Form NLRB-505); and (3) Description of Representation Case Procedures (Form NLRB 4812). The showing of interest should only be filed with the NLRB and should not be served on the employer or any other party.

**1. PURPOSE OF THIS PETITION: RC-CERTIFICATION OF REPRESENTATIVE** - A substantial number of employees wish to be represented for purposes of collective bargaining by Petitioner and Petitioner desires to be certified as representative of the employees. The Petitioner alleges that the following circumstances exist and requests that the National Labor Relations Board proceed under its proper authority pursuant to Section 9 of the National Labor Relations Act.

<b>2a. Name of Employer:</b> Bering Global Solutions LLC / Bering Straits Native Corporation		<b>2b. Address(es) of Establishment(s) involved (Street and number, City, State, ZIP code):</b> 3301 C Street, Suite 400 Anchorage, AK 99503	
<b>3a. Employer Representative - Name and Title:</b> Krystal Nelson		<b>3b. Address (if same as 2b - state same):</b> same	
<b>3c. Tel. No.</b> 907-334-8375	<b>3d. Cell No.</b> 907-229-6407	<b>3e. Fax No.</b> 907-563-2742	<b>3f. E-Mail Address</b> knelson@beringstraits.com
<b>4a. Type of Establishment (Factory, mine, wholesaler, etc.):</b> Security Systems and Services		<b>4b. Principal Product or Service</b> Security	
<b>5b. Description of Unit Involved:</b> Included: see attached Excluded: see attached		<b>5a. City and State where unit is located:</b> Chesapeake Beach, MD	
		<b>6a. Number of Employees in Unit:</b> 15	
		<b>6b. Do a substantial number (30% or more) of the employees in the unit wish to be represented by the Petitioner?</b> <input type="checkbox"/> Yes <input type="checkbox"/> No	
<b>Check One:</b> <input type="checkbox"/> 7a. Request for recognition as Bargaining Representative was made on (Date) _____ and Employer declined recognition on or about (Date) _____ (If no reply received, so state). <input type="checkbox"/> 7b. Petitioner is currently recognized as Bargaining Representative and desires certification under the Act.			
<b>8a. Name of Recognized or Certified Bargaining Agent (if none, so state):</b> Governed United Security Professionals		<b>8b. Address:</b> 5602 Baltimore National Pike Suite #607 Baltimore, MD 21228	
<b>8c. Tel. No.</b> 443-304-2018	<b>8d. Cell No.</b>	<b>8e. Fax No.</b> 443-304-2855	<b>8f. E-Mail Address</b> arhodes@guspu.com
<b>8g. Affiliation, if any:</b>		<b>8h. Date of Recognition or Certification</b> 12/28/2017	
<b>8i. Expiration Date of Current or Most Recent Contract, if any (Month, Day, Year)</b> 12/31/2020			
<b>9. Is there now a strike or picketing at the Employer's establishment(s) involved?</b> No If so, approximately how many employees are participating? _____ (Name of Labor Organization) _____, has picketed the Employer since (Month, Day, Year) _____			
<b>10. Organizations or individuals other than Petitioner and those named in items 8 and 9, which have claimed recognition as representatives and other organizations and individuals known to have a representative interest in any employees in the unit described in item 5b above. (If none, so state)</b>			
<b>10a. Name</b>	<b>10b. Address</b>	<b>10c. Tel. No.</b>	<b>10d. Cell No.</b>
		<b>10e. Fax No.</b>	<b>10f. E-Mail Address</b>
<b>11. Election Details:</b> If the NLRB conducts an election in this matter, state your position with respect to any such election: <b>11a. Election Type:</b> <input type="checkbox"/> Manual <input checked="" type="checkbox"/> Mail <input type="checkbox"/> Mixed Manual/Mail			
<b>11b. Election Date(s):</b>		<b>11c. Election Time(s):</b>	
		<b>11d. Election Location(s):</b>	
<b>12a. Full Name of Petitioner (including local name and number):</b> National Union of Special Police Officers NUSPO, LEOS-PBA		<b>12b. Address (street and number, city, State and ZIP code):</b> 5620 ST. Barnabas Road Oxon Hill, MD 20745	
<b>12c. Full name of national or international labor organization of which Petitioner is an affiliate or constituent (if none, so state):</b> Law Enforcement Officers Security & Police Benevolent Association LEOS-PBA			
<b>12d. Tel. No.</b> 202-499-3956	<b>12e. Cell No.</b> (b) (6), (b) (7)(C)	<b>12f. Fax No.</b> 202-499-3956	<b>12g. E-Mail Address</b> (b) (6), (b) (7)(C)@nuspo.org
<b>13. Representative of the Petitioner who will accept service of all papers for purposes of the representation proceeding.</b>			
<b>13a. Name and Title:</b> Jonathan Axelrod, attorney		<b>13b. Address (street and number, city, State and ZIP code):</b> Beins, Axelrod, P.C., 1717 K Street NW, Washington, DC 20006	
<b>13c. Tel. No.</b> 202-328-7222	<b>13d. Cell No.</b> 202-365-1610	<b>13e. Fax No.</b> 202-328-7030	<b>13f. E-Mail Address</b> jaxelrod@beinsaxelrod.com
<b>I declare that I have read the above petition and that the statements are true to the best of my knowledge and belief.</b>			
<b>Name (Print)</b> Jonathan Axelrod	<b>Signature</b> 	<b>Title</b> attorney	<b>Date</b> 11/04/20

WILLFUL FALSE STATEMENTS ON THIS PETITION CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)

## PRIVACY ACT STATEMENT

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. § 151 et seq. The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing representation and related proceedings or litigation. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. Reg. 74942-43 (Dec. 13, 2006). The NLRB will further explain these uses upon request. Disclosure of this information to the NLRB is voluntary; however, failure to supply the information may cause the NLRB to decline to invoke its processes.

## Attachment

### Employees Included

All regular full-time and part-time security officers performing Guard Duties as Defined in Section 9(b)(3) of the National Labor Relations Act, employed by Bering Global Solutions LLC at the Navel Research Laboratory Chesapeake Bay Detachment.

### Employees Excluded

all office clerical employees, professional employees and supervisors as defined by the Act.



UNITED STATES GOVERNMENT  
NATIONAL LABOR RELATIONS BOARD

REGION 5  
BANK OF AMERICA CENTER, TOWER II  
100 S. CHARLES STREET, STE 600  
BALTIMORE, MD 21201

Agency Website: [www.nlrb.gov](http://www.nlrb.gov)  
Telephone: (410)962-2822  
Fax: (410)962-2198

November 13, 2020

John S. Bolesta, Esq.  
Ryan Jennifer Munitz, Esq.  
Sheppard Mullin Richter & Hampton LLP  
2099 Pennsylvania Avenue, N.W., Suite 100  
Washington, DC 20006

Re: Bering Global Solutions LLC / Bering  
Straits Native Corporation  
Case 05-RC-268580

Dear Mr. Bolesta and Ms. Munitz:

This is to advise you that the Petitioner's request to withdraw the petition in the above case has been approved.

Very truly yours,

/s/ *Sean R. Marshall*

Sean R. Marshall  
Regional Director

cc: Ms. Krystal Nelson  
Bering Global Solutions LLC / Bering  
Straits Native Corporation  
3301 C Street, Suite 400  
Anchorage, AK 99503

**(b) (6), (b) (7)(C)**  
Governed United Security Professionals (GUSP)  
5602 Baltimore National Pike, Suite 607  
Baltimore, MD 21228

**(b) (6), (b) (7)(C)**  
National Union of Special Police  
Officers NUSPO, LEOS-PBA  
5620 Saint Barnabas Road  
Oxon Hill, MD 20745

Jonathan G. Axelrod, Esq.  
Beins Axelrod, P.C.  
1717 K Street, N.W., Suite 1120  
Washington, DC 20006







UNITED STATES GOVERNMENT  
NATIONAL LABOR RELATIONS BOARD  
REGION 5  
BANK OF AMERICA CENTER, TOWER II  
100 S. CHARLES STREET, STE 600  
BALTIMORE, MD 21201

Agency Website: [www.nlrb.gov](http://www.nlrb.gov)  
Telephone: (410)962-2822  
Fax: (410)962-2198

January 15, 2021

(b) (6), (b) (7)(C)

International Council of Security of America #101 a/w  
International Council of Security of America  
P.O. Box 3348  
Wilmington, DE 19804

Re: Centerra, a Constellis Company  
Case 05-RC-270763

Dear (b) (6), (b) (7)(C)

The above-captioned case, petitioning for an investigation and determination of representative under Section 9(c) of the National Labor Relations Act, has been carefully investigated and considered.

**Decision to Dismiss:** As a result of the investigation, I have decided to dismiss your petition. You filed your petition on December 28, 2020, seeking to represent a unit of armed and unarmed security officers, dispatchers, and sergeants employed by Centerra Group P.LLC, whose correct name is Centerra, a Constellis Company (the Employer), at the Department of Interior facility currently located at 1849 C St. NW, Washington, DC. As your petition shows, these employees are currently represented by Governed United Security Professionals (the Intervenor). The Region's investigation confirmed that the Employer and the Intervenor are parties to a collective-bargaining agreement effective by its terms from September 30, 2020, through September 29, 2023.

On January 7, 2021, I issued a Notice to Show Cause why I should not administratively dismiss the instant petition as barred, in accordance with the Board's contract bar doctrine. In response to the Notice to Show Cause, you raise two arguments. First, you assert that the Intervenor's constitution and bylaws require any and all collective-bargaining agreements be reviewed, discussed, and receive a mandatory majority vote of approval by the dues paying members before any officers of the Intervenor sign the proposed agreement, which is also known as ratification. Second, you argue that the relevant collective-bargaining agreement was backdated by the parties.

With regard to your assertions concerning ratification, the Board has long held that, when a ratification requirement is included in a union's constitution or bylaws, ratification of a collective-bargaining agreement is only necessary when there is an express agreement by the parties to that effect, or when the employer is on notice that the union could not accept any offer without employee approval. See *Appalachian Shale Products Co.*, 121 NLRB 1160, 1162-1163 (1958) (when ratification is a condition precedent to contractual validity by *express* provision in the contract itself, the contract is ineffectual as a bar unless it is ratified prior to the filing of a petition); see e.g. *Teledyne Specialty Equipment Landis Machine Co.*, 327 NLRB 928, 930

(1999) (ratification established as condition precedent based on employer knowledge of union's constitutional requirement and union's express refusal to agree to certain employer demands because it lacked the authority to agree to such proposals); *Sacramento Union*, 296 NLRB 477, 482-83, 487-88 (1989) (ratification not a condition precedent notwithstanding that it was required under union's bylaws and union gave employer notice at outset of bargaining that its negotiators had authority to bargain a contract subject to final agreement by its members). In this case, there is no evidence of an express agreement between the Intervenor and the Employer requiring ratification of the relevant collective-bargaining agreement, nor is there evidence that the Intervenor unilaterally ceded its negotiating authority by providing the Employer with clear and timely notice that ratification would be required.

With regard to your assertion that the relevant collective-bargaining agreement was backdated, you provided no evidence in support of that claim.

Under the Board's contract bar doctrine, a written agreement signed by the relevant parties prior to the filing of a petition, containing substantial terms and conditions of employment sufficient to stabilize the bargaining relationship, will bar an election. *Appalachian Shale Products Co.*, 121 NLRB 1160, 1162-64 (1958). An existing collective-bargaining agreement, such as the contract between the Employer and the Intervenor, will be found to bar an election for a period of up to 3 years, and any representation petition that is filed during those 3 years will be dismissed unless the petition is filed during the appropriate window period of more than 60 days, and no more than 90 days, before the last day of the third year of the agreement. *General Cable Corp.*, 139 NLRB 1123, 1126 (1962); *Leonard Wholesale Meats, Inc.*, 136 NLRB 1000, 1001 (1962). Here, the written agreement between the Employer and the Intervenor contains substantial terms and conditions of employment sufficient to stabilize the bargaining relationship, and the petition in this case was not filed during the applicable window period. Therefore, the petition is untimely filed and barred by the Board's contract bar doctrine.

Accordingly, I am dismissing the petition in this matter.

***Right to Request Review:*** Pursuant to Section 102.67 of the National Labor Relations Board's Rules and Regulations, you may obtain a review of this action by filing a request with the Executive Secretary, National Labor Relations Board, 1015 Half Street SE, Washington, DC 20570-0001. A copy of the request for review must be served on each of the other parties, as well as on the undersigned, in accordance with the requirements of the Board's Rules and Regulations. The request for review must contain a complete statement of the facts and reasons on which it is based.

***Procedures for Filing Request for Review:*** Pursuant to Section 102.5 of the Board's Rules and Regulations, a request for review must be filed by electronically submitting (E-Filing) it through the Agency's web site ([www.nlrb.gov](http://www.nlrb.gov)), unless the party filing the request for review does not have access to the means for filing electronically or filing electronically would impose an undue burden. A request for review filed by means other than E-Filing must be accompanied by a statement explaining why the filing party does not have access to the means for filing electronically or filing electronically would impose an undue burden. Section 102.5(e) of the Board's Rules do not permit a request for review to be filed by facsimile transmission. A



copy of the request for review must be served on each of the other parties to the proceeding, as well as on the undersigned, in accordance with the requirements of the Board's Rules and Regulations. The request for review must comply with the formatting requirements set forth in Section 102.67(i)(1) of the Board's Rules and Regulations. Detailed instructions for using the NLRB's E-Filing system can be found in the [E-Filing System User Guide](#).

A request for review must be received by the Executive Secretary of the Board in Washington, DC, by close of business (**5 p.m. Eastern Time**) on **February 1, 2021**, unless filed electronically. If filed electronically, it will be considered timely if the transmission of the entire document through the Agency's website is **accomplished by no later than 11:59 p.m. Eastern Time on February 1, 2021**.

Filing a request for review electronically may be accomplished by using the E-Filing system on the Agency's website at [www.nlr.gov](http://www.nlr.gov). Once the website is accessed, click on **E-File Documents**, enter the NLRB Case Number, and follow the detailed instructions. The responsibility for the receipt of the request for review rests exclusively with the sender. A failure to timely file the request for review will not be excused on the basis that the transmission could not be accomplished because the Agency's website was off line or unavailable for some other reason, absent a determination of technical failure of the site, with notice of such posted on the website.

Upon good cause shown, the Board may grant special permission for a longer period within which to file a request for review. A request for extension of time, which must also be filed electronically, should be submitted to the Executive Secretary in Washington, and a copy of such request for extension of time should be submitted to the Regional Director and to each of the other parties to this proceeding. A request for an extension of time must include a statement that a copy has been served on the Regional Director and on each of the other parties to this proceeding in the same manner or a faster manner as that utilized in filing the request with the Board.

Any party may, within 5 business days after the last day on which the request for review must be filed, file with the Board a statement in opposition to the request for review. An opposition must be filed with the Board in Washington, DC, and a copy filed with the Regional Director and copies served on all the other parties. The opposition must comply with the formatting requirements set forth in §102.67(i)(1). Requests for an extension of time within which to file the opposition shall be filed pursuant to §102.2(c) with the Board in Washington, DC, and a certificate of service shall accompany the requests. The Board may grant or deny the request for review without awaiting a statement in opposition. No reply to the opposition may be filed except upon special leave of the Board.

Very truly yours,

*/s/ Sean R. Marshall*

Sean R. Marshall  
Regional Director

cc: Office of the Executive Secretary (by e-mail)

Kevin J. Morris, Esq.  
Constellis  
10101 West Sample Road, Suite 311  
Coral Springs, FL 33065

Captain Clarence Taylor  
Centerra, a Constellis Company  
13530 Dulles Technology Drive, Suite 500  
Herndon, VA 20171

Mr. Kent Emery  
President  
Governed United Security Professionals  
5602 Baltimore National Pike, Suite 607  
Baltimore, MD 21228

UNITED STATES GOVERNMENT  
NATIONAL LABOR RELATIONS BOARD  
**RC PETITION**

DO NOT WRITE IN THIS SPACE	
Case No. <b>05-RC-279371</b>	Date Filed <b>7/1/21</b>

**INSTRUCTIONS:** Unless e-Filed using the Agency's website, [www.nlr.gov](http://www.nlr.gov), submit an original of this Petition to an NLRB office in the Region in which the employer concerned is located. The petition must be accompanied by both a showing of interest (see 6b below) and a certificate of service showing service on the employer and all other parties named in the petition of: (1) the petition; (2) Statement of Position form (Form NLRB-505); and (3) Description of Representation Case Procedures (Form NLRB 4812). The showing of interest should only be filed with the NLRB and should not be served on the employer or any other party.

1. PURPOSE OF THIS PETITION: RC-CERTIFICATION OF REPRESENTATIVE - A substantial number of employees wish to be represented for purposes of collective bargaining by Petitioner and Petitioner desires to be certified as representative of the employees. The Petitioner alleges that the following circumstances exist and requests that the National Labor Relations Board proceed under its proper authority pursuant to Section 9 of the National Labor Relations Act.

2a. Name of Employer <b>Georgetown University</b>	2b. Address(es) of Establishment(s) involved (Street and number, city, State, ZIP code) <b>3700 O Street NW &amp; 600 New Jersey Ave, Washington, DC</b>
--	---

3a. Employer Representative - Name and Title <b>Roberta Paul, Director, Employee Relations and Engagement</b>	3b. Address (if same as 2b state same) <b>3700 O Street NW, Washington, DC 20057</b>
--	---

3c. Tel. No. <b>202-687-5022</b>	3d. Cell No.	3e. Fax No.	3f. E-Mail Address <b>roberta.paul@georgetown.edu</b>
-------------------------------------	--------------	-------------	--

4a. Type of Establishment (Factory, mine, wholesaler, etc.) <b>College</b>	4b. Principal product or service <b>Education</b>	5a. City and State where unit is located. <b>Washington, DC</b>
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5b. Description of Unit Involved <b>Included: ALL FULL TIME AND PART TIME ARMED AND UNARMED SECURITY OFFICERS, SPECIAL POLICE OFFICERS I AND II, MASTER POLICE OFFICERS, INVESTIGATORS AND COMMUNICATION OFFICERS PERFORMING GUARD DUTIES AS DEFINED IN SECTION 9(b)(3) OF THE NATIONAL LABOR RELATIONS ACT, EMPLOYED BY GEORGETOWN UNIVERSITY @ 3700 O STREET NW &amp; 600 NEW JERSEY AVE, WASHINGTON, DC</b>	6a. No. of Employees in Unit: <b>73</b>
---	--

**Excluded:** ALL OFFICE CLERICAL EMPLOYEES, PROFESSIONAL EMPLOYEES AND SUPERVISORS AS DEFINED BY THE ACT.

**Check One:** ☐ 7a. Request for recognition as Bargaining Representative was made on (Date) **none** and Employer declined recognition on or about (Date) (If no reply received, so state).  
☐ 7b. Petitioner is currently recognized as Bargaining Representative and desires certification under the Act.

8a. Name of Recognized or Certified Bargaining Agent (If none, so state). <b>leosu</b>	8b. Address <b>1155 F Street, NW, Suite 1050, Washington, DC 20004</b>
---	---

8c. Tel No.	8d. Cell No.	8e. Fax No. <b>202-595 3510</b>	8f. E-Mail Address <b>leosudc@gmail.com</b>
-------------	--------------	------------------------------------	--

8g. Affiliation, if any	8h. Date of Recognition or Certification <b>05/03/2018</b>	8i. Expiration Date of Current or Most Recent Contract, if any (Month, Day, Year) <b>6/30/21</b>
-------------------------	---	---

9. Is there now a strike or picketing at the Employer's establishment(s) involved? **no** If so, approximately how many employees are participating? \_\_\_\_\_  
(Name of labor organization) \_\_\_\_\_, has picketed the Employer since (Month, Day, Year) \_\_\_\_\_.

10. Organizations or individuals other than Petitioner and those named in items 8 and 9, which have claimed recognition as representatives and other organizations and individuals known to have a representative interest in any employees in the unit described in item 5b above. (If none, so state)  
**none**

10a. Name	10b. Address	10c. Tel. No.	10d. Cell No.
		10e. Fax No.	10f. E-Mail Address

11. Election Details: If the NLRB conducts an election in this matter, state your position with respect to any such election.

11a. Election Type: <input type="checkbox"/> Manual <input checked="" type="checkbox"/> Mail <input type="checkbox"/> Mixed Manual/Mail	11b. Election Date(s): <b>7/30/21</b>	11c. Election Time(s): <b>N/A</b>	11d. Election Location(s): <b>N/A</b>
---	--	--------------------------------------	--

12a. Full Name of Petitioner (including local name and number) International Union, Security, Police and Fire Professionals of America (SPFPA)	12b. Address (street and number, city, state, and ZIP code) 25510 Kelly Road, Roseville, MI 48066
---	--

12c. Full name of national or international labor organization of which Petitioner is an affiliate or constituent (if none, so state)  
International Union, Security, Police and Fire Professionals of America (SPFPA)

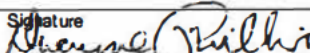
12d. Tel No. 586-772-7250 X111	12e. Cell No. 586-872-5634	12f. Fax No. 586-772-9644	12g. E-Mail Address organize@spfpa.org
-----------------------------------	-------------------------------	------------------------------	---

13. Representative of the Petitioner who will accept service of all papers for purposes of the representation proceeding.

13a. Name and Title <b>Scott A. Brooks, Counsel</b>	13b. Address (street and number, city, state, and ZIP code) <b>28 W Adams Ave, Suite 300, Detroit, MI 48226</b>
--	--

13c. Tel No. 313-964-5600	13d. Cell No.	13e. Fax No. 313-964-2125	13f. E-Mail Address <b>Scott@UnionLaw.net</b>
------------------------------	---------------	------------------------------	--

I declare that I have read the above petition and that the statements are true to the best of my knowledge and belief.

Name (Print) <b>Dwayne Phillips</b>	Signature 	Title <b>National Organizing Director</b>	Date <b>7/1/21</b>
--	--	--	-----------------------

WILLFUL FALSE STATEMENTS ON THIS PETITION CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)

**PRIVACY ACT STATEMENT**

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. § 151 et seq. The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing representation and related proceedings or litigation. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. Reg. 74942-43 (Dec. 13, 2006). The NLRB will further explain these uses upon request. Disclosure of this information to the NLRB is voluntary; however, failure to supply the information will cause the NLRB to decline to invoke its processes.

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 5**

GEORGETOWN UNIVERSITY

Employer

and

CASE 05-RC-279371

INTERNATIONAL UNION, SECURITY, POLICE  
AND FIRE PROFESSIONALS OF AMERICA, (SPFPA)

Petitioner

and

LAW ENFORCEMENT OFFICERS SECURITY  
UNIONS, LEOSU-LEOS-PBA<sup>1</sup>

Intervenor

**DECISION AND ORDER**

**I. INTRODUCTION**

Georgetown University (the Employer) is engaged in the operation of a nonprofit university in the District of Columbia (DC). The International Union, Security, Police and Fire Professionals of America, (SPFPA) (the Petitioner), filed the instant petition with the National Labor Relations Board (Board) under Section 9(c) of the National Labor Relations Act (Act), seeking to represent the approximately 70 employees in a unit currently represented by the Law Enforcement Officers Security Unions, LEOSU-LEOS-PBA (the Intervenor). The parties stipulated that the following unit is an appropriate unit under the Act: All full-time and regular part-time Security Officers, Special Police Officers I, Special Police Officers II, Master Police Officers, Investigators, Communications Operators and Communications Officers employed by the Employer at its Main Campus and Law Center Locations; but excluding confidential employees, office clerical employees, executive and managerial employees, non-guards, student access controllers, sergeants, and supervisors as defined in the Act.<sup>2</sup> The parties further stipulated that there was a collective-bargaining agreement covering the employees in the

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<sup>1</sup> The parties made a joint motion to amend the petition and other formal documents to correctly reflect the names of the parties as indicated herein.

<sup>2</sup> I find, as the parties stipulated, that this unit is an appropriate unit within the meaning of Section 9(b) of the Act.

described unit which was effective August 1, 2018 through June 30, 2021, and that, on May 3, 2018, the Board issued a Certification of Representative for the Intervenor for the employees in this unit.

At issue in this proceeding is whether there is a contract bar precluding the processing of the instant petition. The Employer and Intervenor assert that there is a contract bar, claiming the 2018-2021 collective-bargaining agreement (CBA or Contract) automatically renewed, inasmuch as neither the Employer nor Intervenor notified the other party that it wanted to terminate or modify the contract in accordance with the Contract's automatic renewal provision. The Petitioner, on the other hand, avers that the evidence shows that the Employer and Intervenor do not consider the CBA to have renewed and, instead, they are currently bargaining for a new contract; hence, the Petitioner contends that there is no contract bar.

The Employer and Petitioner agree that, if an election were to be held a manual election is appropriate. The Intervenor requests that any election be conducted by mail ballot, arguing that it is more appropriate at the present time and easier, particularly because the unit employees work around the clock shifts.<sup>3</sup>

A hearing officer of the Board heard this case by videoconference on July 23, 2021,<sup>4</sup> during which the parties entered into several stipulations.<sup>5</sup> All parties filed post-hearing briefs.

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<sup>3</sup> The parties were advised that the determination over the method of election would not be litigated. The decision over the method of election is within the discretion of the Regional Director, and therefore, was not a subject of litigation at hearing. NLRB Casehandling Manual (Part Two), Representation Proceedings, Section 11128 and Section 11301.2 (Casehandling Manual).

<sup>4</sup> All dates are in 2021 unless otherwise noted.

<sup>5</sup> Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated the undersigned its authority in this proceeding. Upon the entire record in this proceeding, I find:

1. The hearing officer's rulings, made at hearing, are free from prejudicial error and are hereby affirmed.
2. The parties stipulated, and I find, that the Employer, a private nonprofit university with an office and place of business in the District of Columbia, is engaged in the operation of a nonprofit university. In conducting its operations during the 12-month period ending June 30, 2021, the Employer derived gross revenues available for operating expenses in excess of \$1 million. In conducting its operations during the same 12-month period, the Employer has conducted its business operations described herein in Washington, D.C., and the Board asserts plenary jurisdiction over enterprises in Washington, D.C. In conducting its operations during the same 12-month period, the Employer purchased and received at its Washington, D.C. facility products, goods, and materials valued in excess of \$5,000 directly from points outside the District of Columbia.

Based on the entire record, and in consideration of the parties' arguments and briefs, and relevant Board law, I have determined that there is a contract bar precluding proceeding on the instant petition and, therefore, I am dismissing the petition.

## II. FACTS

As noted previously, the Employer and Intervenor were parties to an agreement effective from August 1, 2018 through June 30. Section 28.1 of Article XVIII, the Effective Date and Duration provision, provides that, "Term of Agreement. This Agreement shall become effective as of August 1, 2018, and shall continue in full force and effect through and including June 30, 2021, and shall continue in full force and effect for subsequent one (1) year periods thereafter unless written notice of desire to terminate or modify this Agreement is given by either party and actually received by the other party not less than ninety (90) days prior to June 30, 2021 or any subsequent anniversary date if this Agreement has been automatically renewed in accordance with Section 28.1." <sup>6</sup>

The evidence reflects that neither the Employer nor the Intervenor provided written notification to terminate or modify the Contract on or by the 90<sup>th</sup> day before the expiration of the Contract. In this connection, Steve Maritas, organizing director for LEOSU-DC, testified that at no time prior to the automatic renewal provision's deadline did the Intervenor send any letter to the Employer stating that the Intervenor wanted to reopen and negotiate a successor agreement and that the Employer never sent the Intervenor any such letter. Similarly, Roberta Kelley Paul, the Employer's university director for employee relations and engagement, testified that at no time prior to June 30 did the Employer notify the Intervenor that it wanted to terminate or

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3. I further find, as also stipulated by the parties, that the Employer is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act and is subject to the jurisdiction of the Board, and it will effectuate the purposes of the Act to assert jurisdiction herein.
  4. The parties also stipulated, and I find, that the Petitioner is a labor organization within the meaning of Section 2(5) of the Act.
  5. I further find, as the parties stipulated, that the Intervenor is a labor organization within the meaning of Section 2(5) of the Act.
  6. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

<sup>6</sup> I will refer to this section as the automatic renewal provision throughout this decision. Based on this provision, a written notice of desire to terminate or modify this Contract would have to be given and received on or by April 1, 2021 to forestall the renewal provision.



modify the CBA and that it never received any written notification before March 30 from the Intervenor that it desired to terminate or modify the Contract.<sup>7</sup>

However, Paul did receive a communication from the Intervenor regarding the Contract, on May 3, by e-mail from the Intervenor's attorney, Grant Lally, with two letters from Lally, appearing as a single document, attached thereto. One attached letter, dated May 3, read, "I have not heard back regarding our notice to extend the CBA . . . Please let this letter serve as further notice of our intention to extend the agreement. Please advise as to when we can meet, and feel free to contact me regarding the above." The other attached letter was dated March 30, in which was written, "As per the collective bargaining agreement between LEOSU and Georgetown University dated August 22, 2018, please let this letter serve as notice of our intention to extend the agreement." Paul testified she did not receive the March 30 letter until May 3. Maritas, who received a courtesy copy of Lally's May 3 e-mail, similarly testified that the March 30 letter was not sent until May 3. Maritas stated that he did not know why the March 30 letter was not sent until May 3, but explained that it was an oversight and that, "the contract calls for us to give Georgetown at least 90-days notice to reopen the contract. My attorney, from my understanding, failed to send the proper notifications. And based on that, the contract rolled over."

On May 3, Paul replied to Lally by e-mail, stating that the Employer would be in touch with dates to discuss their agreement. The Employer and the Intervenor thereafter discussed meeting dates, and on June 10, Paul sent the Intervenor an e-mail confirming a June 14 meeting date and making clear it was the Employer's position that the CBA had automatically renewed. She noted, "In accordance with Article 28.1 of our agreement, it is the University's position that we currently have an agreement that shall continue in full force and effect through June 20, 2022. Your March 30 and May 3, 2021 letters did not provide notice of an intent to modify or terminate the agreement under Article 28.1." She added, "We are prepared to meet beginning on Monday to see if we can negotiate a new agreement, but we believe that we have an agreement in place until June 30, 2022." After the parties met on June 14, Paul sent another e-mail on the same date to the Intervenor, reaffirming the Employer's position that there was a contract in effect through June 30, 2022, and that the parties had begun the process of negotiating a new agreement. Maritas responded by e-mail, and in reference to Employer's position that a contract was in effect through June 2022, remarked that, "the Union takes no position at this time."

The Employer and Intervenor met to negotiate a new contract on June 14, June 17, June 29, and July 9. Both Maritas and Paul explained that they are unsure when new terms or a new contract would take effect, as such would be subject to negotiation. However, Maritas expressed the Intervenor's desire that any new terms would become effective immediately and Paul acknowledged that any new agreement could take effect prior to July 1, 2022. Paul testified that she had never taken part in contract negotiations occurring approximately a year before it would take effect and explained that, although the Employer is not obligated to bargain with the Intervenor at this time, it chooses to because the Employer believes it is important.

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<sup>7</sup> The date by which Paul believed written notification of a desire to modify or terminate the Contract would be due.

It is undisputed that while the parties bargained, the Intervenor contemplated a strike vote.<sup>8</sup> Moreover, during this May/June time period, Maritas never told unit employees that the Contract rolled over and was in effect through June 30, 2022. Regarding the former, Maritas testified that he believed that the Intervenor could strike during contract negotiations, despite the Contract's no-strike or lockout provision, if a Federal Mediation & Conciliation Service (FMCS) F-7 form was completed. Concerning the latter, he remained silent to unit employees about the renewed agreement because he thought it was more important for the Employer to improve terms and conditions of employment "versus taking a position that the contract rolled over."<sup>9</sup>

Debbera DiLena, a master police officer in the unit currently represented by the Intervenor, who also serves as the Intervenor's local president, testified that she sent an e-mail on May 26 to Maritas asking about upcoming negotiations, and that at no point before that had Maritas said anything to her about the Intervenor's May 3 communications, above, with the Employer. DiLena also sent an e-mail on that same date to Paul regarding negotiations, and Paul relayed it was the Employer's intention to begin meeting in June. Paul never mentioned in this correspondence that the Contract had automatically renewed. In addition, DiLena attended all four bargaining sessions, referenced above, and she recalled that at the first meeting (June 14), Paul began by asking Maritas if they were negotiating a 1-year rollover or a new contract, noting that before the meeting, she was expecting it be a rollover and, in that case, there would be no need for negotiating a new contract. Maritas replied that they were negotiating a new contract, that he did not want a rollover. DiLena recalled a similar conversation taking place between Paul and Maritas during the June 29 bargaining session. Further, DiLena testified she not aware of any written notification by the Employer or Intervenor to terminate or modify the Contract.

Finally, the record reflects that the Employer has given full effect to the entire Contract since June 30.

### **III. POSITION OF THE PARTIES**

The Employer maintains that since neither the Intervenor nor the Employer sent or received written notice to terminate or modify the CBA prior to the 90-day period provided for in the CBA, the CBA was renewed for another one-year term, through June 30, 2022. It points out that, generally, a party can file a petition from 90 days to 60 days before the expiration of the third year of the collective-bargaining agreement, or any time after the third year of the contract.

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<sup>8</sup> The record reflects that the Maritas relayed the possibility of a strike vote to members on about June 30 and the Employer, by counsel, communicated to the Intervenor, on that same date, its belief that the Contract was in effect through June 30, 2022, and any strike would be in violation of the no-strike clause in this agreement.

<sup>9</sup> Maritas completed a FMCS Form F-7 dated June 29, in which he noted that the contract expired on June 30, 2021, and not June 30, 2022 and he testified that this was a "mistake."

Here, the Petitioner failed to file a petition during this window period, and that, by the time it filed the petition on July 1, the CBA had automatically renewed agreement and was in effect, barring the instant petition. The Employer also maintains that it did not waive the timeliness of the notice required by Section 28.1 of the CBA by engaging in contract negotiations for a new, multi-year agreement, and urges for the dismissal of the instant petition.

The Intervenor likewise asserts that the CBA was extended for another year inasmuch as the Intervenor did not make timely notice of a desire to terminate and renegotiate the CBA, and the Employer never provided any such notification. Addressing the May 3 communication from Lally to the Employer, the Intervenor asserts that neither the timing nor wording was sufficient to prevent the CBA's renewal. It further maintains that the Employer's and Intervenor's negotiations for a new contract, even with the Intervenor's threat to strike, did not nullify the CBA that had been automatically extended through June 2022.

In contrast, the Petitioner claims that the petition is not barred because the Employer and Intervenor have been negotiating for a new agreement to commence before the renewal period is over. The Petitioner further claims that the Employer's and Intervenor's conduct reveal that they did not consider the CBA to have been renewed. In support of these claims, the Petitioner points to the undisputed testimony that the parties have been negotiating for a new agreement and to Maritas' communications about a strike and his indication on an FMCS form that the CBA expired on June 30, 2021, rather than June 30, 2022. In its brief, Petitioner argues that "In light of these circumstances of continued contract negotiations for a CBA to take effect prior to the expiration of the 'auto-renewed' CBA, the Region must find there is no contract bar. To do otherwise would unfairly allow negotiation of a CBA that will take effect prior to the June 30, 2022 'auto-renewed' CBA contract date." The Petitioner expects any new contract would be relied upon by the Intervenor and Employer as a bar to an election in the future.

#### IV. ANALYSIS

Under certain circumstances, the existence of a collective-bargaining agreement will bar an election involving employees covered by the contract. *Direct Press Modern Litho, Inc.*, 328 NLRB 860 (1999). The purpose of this contract bar doctrine is to achieve, "a finer balance between the statutory policies of stability in labor relations and the exercise of free choice in the selection or change of bargaining representatives." *Appalachian Shale Products Co.*, 121 NLRB 1160, 1161 (1958). When there is a question as to whether a representation petition is barred by contract, the burden of proving the existence of a contract rests on the party or parties so asserting. *Roosevelt Memorial Park, Inc.*, 187 NLRB 517 (1970). In pursuit of this balance between choice and stability, the Board has established a window period from 60 to 90 days prior to the expiration of an existing contract, during which the contract will not serve as a bar to a petition for an election of the unit covered by the contract.<sup>10</sup> *Leonard Wholesale Meats, Inc.*,

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<sup>10</sup> This 60-day period preceding and including the expiration date is referred to as the "insulated period." *Deluxe Metal Furniture Co.*, 121 NLRB 995, 1000 (1958).

136 NLRB 1000 (1962); *Crompton Company, Inc.*, 260 NLRB 417, 418 (1982). For purposes of the contract bar doctrine any agreement with a duration of more than three years will be treated as a 3-year agreement. *General Cable Corp.*, 139 NLRB 1123, 1125 (1962).

Board law further makes clear that if a contract is automatically renewed in accord with a contractual automatic renewal provision, the renewed contract bars an election petition, unless a timely petition is filed before the insulated period. Indeed, the Board in *ALJUD Licensed Home Care Services*, 345 NLRB 1089, 1089 (2005), held that “Automatic renewal provisions have been widely used in collective-bargaining agreements since the inception of the Act, and the Board has long held that an automatically renewed agreement bars an election petition filed during the renewal period.” See also, *Ellison Brothers Oyster Company*, 124 NLRB 1225 (1959); *Deluxe Metal Furniture*, 121 NLRB 995 (1958). However, if parties have forestalled automatic renewal and no new agreement has been reached during the 60-day insulated period, a petition will be timely filed after the terminal date of the expired contract and before the execution or effective date of any new contract, whichever is later. *ALJUD Licensed Home Care Services*, 345 NLRB at 1090.

It is also well established that engaging in contract negotiations in the absence of a timely notification to terminate/modify an agreement pursuant to an automatic renewal provision does not forestall the contract’s renewal. In *Moore Drop Forging Co.*, 168 NLRB 984 (1967), the contract was renewable from year to year unless terminated by written notice by either party 60 days prior to the end of the second year of the contract or the end of each subsequent year. The collective-bargaining representative did not provide such notice by the contractual time frame, but rather submitted an untimely list of contract proposals; the parties thereafter bargained, despite the untimely notice. The Board rejected the petitioner’s arguments that the late notice had been excused and that the untimeliness of the notice should be waived, forestalling the automatic renewal provision. Relying on *Deluxe Metal Furniture Co.*, 121 NLRB 995, 1002, (1958), the Board specifically determined that the employer, “by repeatedly negotiating with the committee in the absence of timely notice, did not thereby waive the untimeliness of such notice, and that automatic renewal was not forestalled.” *Id* at 985. See also, *Empire Screen Printing, Inc.*, 249 NLRB 718, 719 (1980) (applying contract bar where parties negotiated over a new agreement despite the absence of timely notice to modify the agreement).

In the instant matter, based on the facts and relevant Board law, I find that the Employer and Intervenor have met their burden of establishing that the CBA automatically renewed, and that this renewed agreement bars the instant petition. Simply put, neither the Employer nor the Intervenor provided written notification to modify or terminate the CBA by the date required under the CBA’s automatic renewal provision, and therefore, the CBA automatically renewed on July 1. The instant petition was filed on July 1, during the renewal period. On these facts and applying extant Board law, I find that contract bar is applicable and that the petition must be dismissed.

I am mindful that the evidence, particularly the letter dated March 30, may indicate that the Intervenor intended to modify or terminate the CBA, and indeed, Maritas hinted as much.<sup>11</sup> Maritas' behavior, including his hesitancy to agree with Employer's position that the CBA was in place through June 2022, his apparent failure to communicate to unit employees that the CBA had been renewed, and actions towards a strike (despite a no-strike/no lockout clause) may be a further indication of a desire to have a new contract. However, regardless of the Intervenor's intention, the evidence reflects that the Intervenor failed to express this desire in writing to the Employer by the contractual deadline.

Moreover, given the failure by the Intervenor and the Employer to provide timely written notification in accord with the automatic renewal provision, the Employer's and Intervenor's participation in negotiations for a new contract do not forestall the renewal period. *Empire Screen Printing, Inc.*, 249 NLRB 718, 719 (1980); *Moore Drop Forging Co.*, 168 NLRB 984 (1967). In addition, I am unaware of any caselaw suggesting that the possibility a new contract might become effective before the expiration of the renewal period undermines long-established Board law holding that contract negotiations do not forestall automatic renewal absent timely notice. Here, these contract negotiations and the Intervenor's wish for a prompt effective date preceding June 30, 2022, may manifest the Intervenor's desire to have forestalled renewal, but it does not alter the evidence that the Intervenor and Employer failed to do so as required by the CBA.

I am also unpersuaded by the Petitioner's equity argument that it would be unfair to allow the parties to negotiate for a new agreement which may also serve as a contract bar, and which may become effective before the expiration of the renewed CBA. As the case law cited above demonstrates, a petition filed during the window period prior to the CBA's expiration would not have been barred.<sup>12</sup> Furthermore, absent a timely filed petition, had the Employer or Intervenor forestalled renewal and thereafter negotiated a new agreement during the insulated period, that new agreement would constitute a bar as well.<sup>13</sup> See, *Deluxe Metal Furniture Company*, 121 NLRB 995 (1958). Finally, to the extent that the Petitioner contends that the CBA does not impart sufficient stability to justify serving as a bar, I disagree. The CBA has a definite effective date and terminal date and a clearly defined renewal period, allowing employees and others the

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<sup>11</sup> However, the March 30 letter is captioned "Re: CBA Contract Renewal" and, as noted, references extending the CBA. Thus, this letter may be a communication acknowledging that the CBA is going to be renewed. It does not make obvious the author's intentions.

<sup>12</sup> The Board noted the same in *ALJUD License Home Care Services*, 345 NLRB at fn. 4 ("Board precedent explicitly provides employees with an opportunity to file a petition during the 60-to-90-day period prior to the expiration of the contract, including a contract containing an automatic renewal clause.").

<sup>13</sup> In this same vein, in *ALJUD Licensed Home Care Services*, 345 NLRB 1089 (2005), the renewed contract barring the petition was for three years, and there was no contemplation that this was unjust.

ability to determine the appropriate time to file petitions.<sup>14</sup> *Cooper Tire & Rubber Co.*, 181 NLRB 509 (1970); *University Lithoprinters, Inc.*, 123 NLRB 1865 (1959).

## V. CONCLUSION

For the foregoing reasons, and after careful review of the facts, Board law, and the parties' briefs and arguments, I find that the August 1, 2018 through June 30, 2021 collective-bargaining agreement was renewed as of July 1, 2021, and thus, the Petitioner's July 1, 2021 petition is barred by the Contract and is dismissed accordingly.

## ORDER

IT IS HEREBY ORDERED that the petition filed in this matter be, and it hereby is dismissed.

## RIGHT TO REQUEST REVIEW

Pursuant to Section 102.67(c) of the Board's Rules and Regulations, you may obtain a review of this action by filing a request with the Executive Secretary of the National Labor Relations Board. The request for review must conform to the requirements of Section 102.67(d) and (e) of the Board's Rules and Regulations and must be filed by **August 31, 2021**.

A request for review may be E-Filed through the Agency's website but may not be filed by facsimile. To E-File the request for review, go to [www.nlr.gov](http://www.nlr.gov), select E-File Documents, enter the NLRB Case Number, and follow the detailed instructions. If not E-Filed, the request for review should be addressed to the Executive Secretary, National Labor Relations Board, 1015 Half Street SE, Washington, DC 20570-0001. A party filing a request for review must

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<sup>14</sup> Additionally, although establishing whether the CBA was renewed or forestalled under the automatic renewal provision necessitates showing extrinsic evidence (i.e., a written notification or the absence thereof), this does not indicate the CBA is insufficient, given this same and similar renewal language has been in contracts found by the Board to sufficiently constitute a bar to an election. See *Ellison Brothers Oyster Company*, 124 NLRB 1225 (1959); *Empire Screen Printing*, 249 NLRB 718 (1980); *ALJUD Licensed Home Care Services*, 345 NLRB 1089 (2005). Moreover, as previously noted, extrinsic evidence is not needed to establish the duration of the CBA. *Cooper Tire and Rubber*, 181 NLRB 509 (1970)

August 17, 2021

serve a copy of the request on the other parties and file a copy with the Regional Director. A certificate of service must be filed with the Board together with the request for review.

Issued at Baltimore, Maryland this 17th day of August, 2021.

(SEAL)


/s/ *Sean R. Marshall*

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Sean R. Marshall, Regional Director  
National Labor Relations Board, Region 05  
Bank of America Center, Tower II  
100 S. Charles Street, Ste. 600  
Baltimore, MD 21201

UNITED STATES OF AMERICA  
NATIONAL LABOR RELATIONS BOARD  
**RD PETITION**Case No.  
**05-RD-268864**Date Filed  
**11-10-2020**

**INSTRUCTIONS:** Unless e-Filed using the Agency's website, [www.nlr.gov](http://www.nlr.gov), submit an original of this Petition to an NLRB office in the Region in which the employer concerned is located. The petition must be accompanied by both a showing of interest (see 7 below) and a certificate of service showing service on the employer and all other parties named in the petition of: (1) the petition; (2) Statement of Position form (Form NLRB-505); and (3) Description of Representation Case Procedures (Form NLRB 4812). The showing of interest should only be filed with the NLRB and should not be served on the employer or any other party.

<b>1. PURPOSE OF THIS PETITION: RD- DECERTIFICATION (REMOVAL OF REPRESENTATIVE)</b> - A substantial number of employees assert that the certified or currently recognized bargaining representative is no longer their representative. The Petitioner alleges that the following circumstances exist and requests that the National Labor Relations Board proceed under its proper authority pursuant to Section 9 of the National Labor Relations Act.			
<b>2a. Name of Employer</b> Transdev		<b>2b. Address(es) of Establishment(s) involved (Street and number, city, state, ZIP code)</b> Herndon, VA; Huntington, VA; Fairfax VA	
<b>3a. Employer Representative - Name and Title</b> Terrance Thompson, General Manager		<b>3b. Address (If same as 2b - state name)</b>	
<b>3c. Tel. No.</b>	<b>3d. Fax No.</b>	<b>3e. Cell No.</b>	<b>3f. E-Mail Address</b>
<b>4a. Type of Establishment (Factory, mine, wholesaler, etc.)</b> Transportation		<b>4b. Principal product or service</b> Transportation	
<b>5a. Description of Unit Involved</b> <b>Included:</b> All Transdev employees at this facility who are currently represented by OPEIU Local 2  <b>Excluded:</b> All other employees			<b>5b. City and State where unit is located:</b> Herndon, VA; Huntington, VA; Fairfax, VA
<b>6. No. of Employees in Unit</b> 15	<b>7. Do a substantial number (30% or more) of the employees in the unit no longer wish to be represented by the certified or currently recognized bargaining representative?</b> <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No		
<b>8a. Name of Recognized or Certified Bargaining Agent</b> OPEIU Local 2		<b>8b. Affiliation, if any</b>	
<b>8c. Address</b> 8555 16th Street #550, Silver Spring, MD 20910		<b>8d. Tel. No.</b> (301)608-8080	<b>8e. Cell No.</b>
		<b>8f. Fax No.</b>	<b>8g. E-Mail Address</b> mspiller@opeiu-local2.org
<b>9. Date of Recognition or Certification</b>		<b>10. Expiration Date of Current or Most Recent Contract, if any (Month, Day, Year)</b> November 2019	
<b>11a. Is there now a strike or picketing at the Employer's establishment(s) involved?</b> <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		<b>11b. If so, approximately how many employees are participating?</b>	
<b>11c. The Employer has been picketed by or on behalf of (Insert Name)</b> (Insert Address)		<b>a labor organization, of</b> since (Month, Day, Year)	
<b>12. Organizations or individuals other those named in items 8 and 11c, which have claimed recognition as representatives and other organizations and individuals known to have a representative interest in any employees in the unit described in item 5 above. (If none, so state)</b>			
<b>12a. Name</b>	<b>12b. Address</b>	<b>12c. Tel. No.</b>	<b>12d. Fax No.</b>
		<b>12e. Cell No.</b>	<b>12f. E-Mail Address</b>
<b>13. Election Details:</b> If the NLRB conducts an election in this matter, state your position with respect to any such election.		<b>13a. Election Type:</b> <input checked="" type="checkbox"/> Manual <input type="checkbox"/> Mail <input type="checkbox"/> Mixed Manual/Mail	
<b>13b. Election Date(s)</b> ASAP	<b>13c. Election Time(s)</b> ASAP	<b>13d. Election Location(s)</b>	
<b>14. Full Name of Petitioner</b> Amir Daoud			
<b>14a. Address (Street and number, city, state, ZIP code)</b> 2321 Harleyford Court, Reston, VA 20191		<b>14b. Tel. No.</b> 571-267-0435	<b>14c. Fax No.</b>
		<b>14d. Cell No.</b>	<b>14e. E-Mail Address</b> amirdaoud@gmail.com
<b>14f. Affiliation, if any</b>			
<b>15. Representative of the Petitioner who will accept service of all papers for purposes of the representation proceeding.</b>			
<b>15a. Name</b>		<b>15b. Title</b>	
<b>15c. Address (Street and number, city, state, ZIP code)</b>		<b>15d. Tel. No.</b>	<b>15e. Fax No.</b>
		<b>15f. Cell No.</b>	<b>15g. E-Mail Address</b>
<b>I declare that I have read the above petition and that the statements are true to the best of my knowledge and belief.</b>			
<b>Name (Print)</b> Amir Daoud	<b>Signature</b> 	<b>Title</b> Supervisor	<b>Date Filed</b> 11.10.20

WILLFUL FALSE STATEMENTS ON THIS PETITION CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)

## PRIVACY ACT STATEMENT

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. § 151 et seq. The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing representation and related proceedings or litigation. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. Reg. 74942-43 (Dec. 13, 2006). The NLRB will further explain these uses upon request. Disclosure of this information to the NLRB is voluntary; however, failure to supply the information will cause the NLRB to decline to invoke its processes.



**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 5**

TRANSDEV SERVICES, INC.,<sup>1</sup>

Employer,

and

Case 05-RC-268864

AMIR DAOUD,

Petitioner,

and

OFFICE AND PROFESSIONAL EMPLOYEES  
INTERNATIONAL UNION, LOCAL 2,  
AFL-CIO, CLC,

Union.

**DECISION AND ORDER**

Amir Daoud (“Petitioner”) filed the petition herein with the National Labor Relations Board (“Board”) under Section 9(c) of the National Labor Relations Act, as amended (“Act”), seeking to decertify the Office and Professional Employees International Union, Local 2, AFL-CIO, CLC (“Union”) as the exclusive collective-bargaining representative of approximately 52 employees employed by Transdev Services, Inc. (“Employer”) at three Employer locations in Virginia. The sole issue in this proceeding is whether the instant petition is barred by a collective-bargaining agreement executed by the Union and the Employer prior to this petition being filed. Petitioner argues that the petition is invalid because the Union misled the unit employees about the negotiations for a successor collective-bargaining agreement, no member was notified about a signed agreement prior to the petition being filed, and no agreement was validly signed prior to the petition being filed. The Employer and the Union, on the other hand, argue that a valid successor collective-bargaining agreement was executed and made effective prior to the petition being filed, thus, the petition is barred from being processed further.

A hearing was held via videoconference on December 3, 2020 before a hearing officer of the Board.<sup>2</sup> The parties were permitted to file post-hearing briefs, to which the Union and the

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<sup>1</sup> The Employer’s name appears as amended by stipulation of the parties.

<sup>2</sup> Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated the undersigned its authority in this proceeding. Upon the entire record in this proceeding, I find:

1. The hearing officer’s rulings, made at the hearing, are free from prejudicial error and are hereby affirmed.
2. The parties stipulated, and I find, that the Employer is a corporation with offices and places of business in Huntington, West Ox, and Fairfax, Virginia, and has been engaged in the business of providing passenger transportation services. In conducting its operations during the 12-month period ending November 30,

Employer availed themselves, and I have carefully considered the respective positions of all parties.<sup>3</sup>

For the reasons set forth below, and in accordance with extent legal authority, I find that the Employer and the Union are parties to a collective-bargaining agreement, the agreement is valid and effective, and consequently serves to bar the processing of this petition. Accordingly, I will dismiss the petition.

## I. FACTUAL OVERVIEW

On July 27, 2016, the Union was certified by the Board in Case 05-RC-176580 as the exclusive collective-bargaining representative of the following unit (“Unit”):

[a]ll full-time and regular part-time road supervisors, station supervisors, dispatchers, classroom trainers, and EOCC controllers employed by [MV Transportation Inc. (“predecessor”)] at its Fairfax Connector Division at work sites in Huntington, West Ox, and Fairfax, Virginia, excluding all chief supervisors, assistant chief supervisors, and all other employees represented by a labor organization, clerical office, professional employees, guards, and supervisors as defined in the Act. However, the maintenance supervisor, utility supervisor, and shop foreman are neither included nor excluded from the bargaining unit covered by this certification, inasmuch as the parties did not agree on the inclusion or exclusion of the maintenance supervisor, utility supervisor, and shop foreman, and, because it was directed that they vote subject to challenge and because resolution of their inclusion or exclusion is unnecessary because their ballots were not determinative of the election results.<sup>4</sup>

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2020, the Employer performed services valued in excess of \$50,000 in states other than the Commonwealth of Virginia.

3. I further find, as also stipulated by the parties, that the Employer is engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act, and it will effectuate the purposes of the Act to assert jurisdiction herein.
4. The parties additionally stipulated, and I find, that the Union is a labor organization within the meaning of the Act.

<sup>3</sup> At the hearing, the hearing officer, pursuant to my direction and Section 102.66(d) of the Board’s Rules and Regulations, precluded the Union from raising any issue, presenting any evidence related to an issue, cross-examining any witnesses concerning any issue, and presenting arguments concerning any issue with respect to the contract bar issue because the Union failed to timely file a responsive statement of position (“RSOP”). Section 102.66(d) of the Board’s Rules and Regulations required the Union to timely file and serve on the other parties a RSOP, and it failed to do so. I hereby affirm this ruling made on the record.

<sup>4</sup> This unit description appears as it does in the original certification in Case 05-RC-176580. At hearing, the parties stipulated to the following Unit description, which appears in the executed collective-bargaining agreement between the Employer and the Union covering this Unit: all full-time and regular part-time road supervisors, station supervisors, dispatchers, BOCC controllers, gate checker and classroom trainers employed by the Employer at its Fairfax Connector Division with worksites currently in Lorton, Herndon, and Fairfax; but excluding all assistant chief supervisors, auditor driver certification, all other employees represented by a labor organization, clerical, office professional employees, guards and supervisors as defined in the Act. Notwithstanding the difference

On about July 1, 2019, the Employer succeeded the predecessor as the employing entity of the employees in the Unit, and voluntarily recognized the Union as the exclusive collective bargaining representative of the Unit. According to the Employer, at the time that it succeeded the predecessor, it assumed the existing collective-bargaining agreement between the Union and the predecessor, with minor changes.

Beginning in July 2019, the Employer and the Union began negotiating a successor collective-bargaining agreement (the “Agreement”). In June 2020,<sup>5</sup> the Union presented to the bargaining unit a tentative agreement covering non-economic terms agreed to by the Union and Employer. The record discloses that the bargaining unit voted down the non-economic tentative agreement. According to the Union, in about mid-October, the Employer and the Union engaged in a mediation session with an Arbitrator to attempt to resolve a prolonged dispute over the nature of a wage increase set forth in the predecessor collective-bargaining agreement. The mediation session led to the Union and the Employer reaching the Agreement. As part of the mediation, the Employer agreed to give eligible Unit employees an additional two percent wage increase retroactive to July 2019, and an across the board two percent wage increase for all Unit employees retroactive to November 2019.

On about October 21, Union representative Mike Spiller—the individual responsible for representing the Unit and who was a member of the Union’s negotiation team that negotiated the Agreement with the Employer—held a videoconference call with Unit members. During the videoconference, Mr. Spiller presented the Agreement to the Unit members, and informed them that based on recommendations from the Union’s counsel, the Arbitrator, and based on his experience, the Agreement was the best set of terms that the Unit was going to receive from the Employer. It is undisputed that during this call, Mr. Spiller informed the Unit employees that he intended to sign the Agreement, and that he did not need a ratification vote or Unit members’ approval to do so.

On October 30, Mr. Spiller executed the written Agreement, and the following day, Employer General Manager Terence Thompson did the same. Aside from the last page of the Agreement, both parties initialed every page. According to the face of the Agreement, it is effective from October 30 through November 10, 2023. The Agreement contains substantial terms and conditions of employment, including articles related to recognition, union security, wages, hours of work, discipline, grievance and arbitration procedures, benefits, leave policies, and others. The Employer has given effect to the Agreement, and has begun implementing the terms and conditions outlined in the Agreement. Lastly, the Agreement does not contain a ratification requirement.

The Petitioner filed the petition on November 10.

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between the unit descriptions, no party to this matter disputes that the petitioned-for bargaining unit herein is the same Unit involved in the Board’s certification in case 05-RC-176580.

<sup>5</sup> Hereinafter, all dates occurred in 2020, unless otherwise noted.

## II. POSITIONS OF THE PARTIES

Petitioner principally argues that the agreement is invalid and does not bar this petition because the Union misled the bargaining unit for 14 months and did not continue to negotiate the agreement throughout that period. He further argues that none of the Unit members were informed that the Agreement was signed prior to him filing the instant petition. Therefore, Petitioner contends that no valid collective-bargaining agreement was signed prior to this petition being filed.

In contrast, the Employer and the Union contend that the Agreement bars the instant petition from being processed further. To support their positions, the Employer and the Union argue that the Agreement is valid, it meets the Board's definition of a collective-bargaining agreement, it was properly executed, and it became effective prior to the instant petition being filed. Accordingly, the Employer and the Union urge me to find that the Agreement operates as a bar to this petition.

## III. APPLICABLE BOARD LAW

The Board's well-settled contract bar doctrine attempts to balance often competing aims of employee free choice and industrial stability. See, e.g. *Seton Medical Center*, 317 NLRB 87, 88 (1995). This doctrine is intended to afford the contracting parties and the employees a reasonable period of stability in their relationship without interruption and at the same time to afford the employees the opportunity, at reasonable times, to change or eliminate their bargaining representative, if they wish to do so. The burden of proving that a contract is a bar is on the party asserting the doctrine. *Roosevelt Memorial Park, Inc.*, 187 NLRB 517 (1970). "The single indispensable thread running through the Board's decisions on contract bar is that the documents relied on as manifesting the parties' agreement must clearly set out or refer to the terms of the agreement and must leave no doubt that they amount to an offer and an acceptance of those terms through the parties' affixing of their signatures." *Seton Medical Center*, 317 NLRB 87, 87 (1995).

When a petition is filed for a representation election among a group of employees who are alleged to be covered by a collective-bargaining agreement, the Board must decide whether the agreement meets certain requirements such that it operates to serve as a contractual bar to the further processing of that petition. See *Hexton Furniture Co.*, 111 NLRB 342 (1955). A contract must be a "collective" agreement. *J. P. Sand & Gravel Co.*, 222 NLRB 83 (1976). It must be reduced to writing. *Empire Screen Printing, Inc.*, 249 NLRB 718 (1980); *J. Sullivan & Sons Mfg. Corp.*, 105 NLRB 549 (1953). Further, the contract must be signed by authorized representatives of all the parties before the rival petition is filed. *DePaul Adult Care Communities*, 325 NLRB 681 (1998); *Wickly, Inc.*, 131 NLRB 467 (1961); *Freuhauf Trailer Co.*,

87 NLRB 589 (1949). The party asserting contract bar has the burden of proving the agreement was signed by the parties prior to the filing of a petition. *Jackson Terrace Associates*, 346 NLRB 180 (2005).

Moreover, a collective-bargaining agreement must contain substantial terms and conditions of employment to which parties can look for guidance in resolving day-to-day problems. *Appalachian Shale Products Co.*, 121 NLRB 1160 (1958). It must also clearly by its terms encompass the employees involved in the petition, and will not constitute a bar if it does not. *Houck Transport Co.*, 130 NLRB 270 (1961); *Bargain City, U.S.A., Inc.*, 131 NLRB 803 (1961); *Plimpton Press*, 140 NLRB 975, 975 fn. 1 (1963); *Moore-McCormack Lines*, 181 NLRB 510 (1970). Further, the contract must cover an appropriate unit. *Mathieson Alkali Works*, 51 NLRB 113 (1943); *Indianapolis Power & Light Co.*, 76 NLRB 136, 138 fn. 4 (1948); *Moveable Partitions*, 175 NLRB 915, 916 (1969). In considering the appropriateness question, the Board places great weight on bargaining history and “will not disturb an established relationship unless required to do so by the dictates of the Act.” *Great Atlantic & Pacific Tea Co.*, 153 NLRB 1549, 1550 (1965); *Canal Carting, Inc.*, 339 NLRB 969, 970 (2003).

Finally, a master agreement covering more than one plant is not a bar to an election at one of the locations where by its terms the agreement is not effective until a local agreement has been completed, or until the inclusion of the plant has been negotiated by the parties as required by the master agreement, and a petition is filed before these events occur. *Appalachian Shale Products Co.*, 121 NLRB at 1164; *Burns International Security Service*, 257 NLRB 387, 387–388 (1981).

#### IV. ANALYSIS

As extent Board law requires, I must examine the terms of the Agreement “as they appear within the four corners of the instrument itself” in assessing whether it retains its status as a bar to the instant petition. *Jet-Pak Corporation*, 231 NLRB 552, 553 (1977). After careful review of the Agreement and the record, as well as consideration of the parties’ arguments, I find that the Agreement operates as a bar to the processing of this petition.

To begin with, the Agreement is in writing and the record reflects that it is the result of free collective bargaining between the Employer and the Union. The Agreement contains signatures and initials from Mr. Thompson on behalf of the Employer, and Mr. Spiller on behalf of the Union.<sup>6</sup> Both Mr. Spiller and Mr. Thompson testified at the hearing that they signed the Agreement on the date shown on the signatory page—October 30 and October 31, respectively.

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<sup>6</sup> No party asserts that Mr. Thompson was not an authorized representative of the Employer. Petitioner challenges the efficacy of Mr. Spiller and the Union’s representation of the Unit, but stipulated that Mr. Spiller is a representative of the Union. Petitioner also stipulated that Mr. Spiller has been the Unit representative for at least the prior two years. While Petitioner contends that Mr. Spiller was not authorized to execute a contract without ratification by the Unit, there is no evidence in the record to find the same. Accordingly, for these reasons, I find that Mr. Spiller is an authorized representative of the Unit with the authority to enter into the Agreement on behalf of the Union and the Unit.

Therefore, the Employer and Union have met their burden to show that the Agreement was executed prior to the petition being filed. Also, the Agreement, on its face, clearly states that it became effective on October 30. Thus, the Agreement was executed, and became effective, prior to the filing of the instant petition on November 10.

Additionally, a plain reading of the Agreement shows that it contains substantial terms and conditions of employment, that it encompasses the employees covered in this petition, and that the Unit is appropriate for purposes of collective bargaining. Indeed, no party involved in this proceeding has raised as an issue that the Unit, an established bargaining unit, is inappropriate. Lastly, while the Agreement covers multiple Employer locations, there is no evidence that each of the three locations executes a local agreement, or that the Agreement cannot take effect until the parties conduct individual-site bargaining. On the contrary, the Agreement on its face covers all three locations, and there is no evidence in the record that Unit employees' terms and conditions of employment are covered in any other agreement or document other than the Agreement.<sup>7</sup>

Consequently, because I find the Agreement to be a valid collective-bargaining agreement that conforms to certain bar-quality requirements set forth by the Board and was executed prior to the November 10 petition, I find that the Agreement serves to bar an election in this matter.

## **V. CONCLUSION AND ORDER**

Based on the record evidence, as discussed in detail above, the Employer and the Union have met their burden in establishing that the Agreement operates as a bar to processing this petition further. Thus, I conclude that: (1) the Employer and the Union collectively-bargained the terms and conditions set forth in the Agreement that took effect on October 30; (2) authorized representatives of the Employer and the Union executed the Agreement on October 30 and 31, respectively; (3) the Agreement contains substantial terms and conditions of employment that cover the Unit employees—an appropriate unit—involved in this petition; (4) the Agreement retains its bar status even though it covers multiple Employer locations; and (5) the Agreement was executed, and became effective, prior to the instant petition being filed, and thus operates to bar an election. Accordingly, it is hereby ordered that the petition in this matter is dismissed.

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<sup>7</sup> Throughout the hearing, Petitioner, through his own statements or through questions asked of testifying witnesses, presented arguments questioning the effectiveness of the Union's representation of the Unit, in line with allegations typically made in unfair labor practice charges filed against labor organizations. Such arguments are not before me in this proceeding. I am called only to resolve whether a bar exists to conducting an election due to a valid collective-bargaining agreement being executed and in effect prior to the instant petition being filed, and that is the only issue I reach in this Decision and Order.

### RIGHT TO REQUEST REVIEW

Pursuant to Section 102.67(c) of the Board's Rules and Regulations you may obtain a request for review of this Decision by filing a request with Executive Secretary of the National Labor Relations Board. The request for review must conform to the requirements of Section 102.67 (d) and (e) of the Board's Rules and Regulations and must be filed by **January 8, 2021**.

Pursuant to Section 102.5(c) of the Board's Rules and Regulations, a request for review must be filed by electronically submitting (E-Filing) it through the Agency's web site ([www.nlr.gov](http://www.nlr.gov)), unless the party filing the request for review does not have access to the means for filing electronically or filing electronically would impose an undue burden.<sup>8</sup> A request for review may be E-Filed through the Agency's website but may not be filed by facsimile. To E-File the request for review, go to [www.nlr.gov](http://www.nlr.gov), select E-File Documents, enter the NLRB Case Number, and follow the detailed instructions. A party filing a request for review must serve a copy of the request on the other parties and file a copy with the Regional Director. A certificate of service must be filed with the Board together with the request for review.

Issued at Baltimore, Maryland this 22nd day of December, 2020.

(SEAL)

/s/ *Sean R. Marshall*

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Sean R. Marshall, Regional Director  
National Labor Relations Board, Region 05  
Bank of America Center, Tower II  
100 S. Charles Street, Ste. 600  
Baltimore, MD 21201

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<sup>8</sup> On October 21, 2019, the General Counsel (GC) issued Memorandum GC 20-01, informing the public that Section 102.5(c) of the Board's Rules and Regulations mandates the use of the E-filing system for the submission of documents by parties in connection with the unfair labor practice or representation cases processed in Regional offices. The E-Filing requirement went into immediate effect on October 21, 2019, and the 90-day grace period that was put into place expired on January 21, 2020. Parties who do not have necessary access to the Agency's E-Filing system may provide a statement explaining the circumstances, or why requiring them to E-File would impose an undue burden.



UNITED STATES OF AMERICA  
NATIONAL LABOR RELATIONS BOARD  
RD PETITION

Case No.

07-RD-273218

Date Filed

February 24, 2021

INSTRUCTIONS: Unless e-Filed using the Agency's website, [www.nlrb.gov](http://www.nlrb.gov), submit an original of this Petition to an NLRB office in the Region in which the employer concerned is located. The petition must be accompanied by both a showing of interest (see 7 below) and a certificate of service showing service on the employer and all other parties named in the petition of: (1) the petition; (2) Statement of Position form (Form NLRB-505); and (3) Description of Representation Case Procedures (Form NLRB 4812). The showing of interest should only be filed with the NLRB and should not be served on the employer or any other party.

1. PURPOSE OF THIS PETITION. RD- DECERTIFICATION (REMOVAL OF REPRESENTATIVE) - A substantial number of employees assert that the certified or currently recognized bargaining representative is no longer their representative. The Petitioner alleges that the following circumstances exist and requests that the National Labor Relations Board proceed under its proper authority pursuant to Section 9 of the National Labor Relations Act.

2a. Name of Employer <i>Michigan Certified Concrete</i>	2b. Address(es) of Establishment(s) involved (Street and number, city, state, ZIP code) <i>1235 Hoyt SE Grand Rapids, MI 49507</i>
3a. Employer Representative - Name and Title <i>Andrew Goorhouse</i>	3b. Address (if same as 2b - state name)
3c. Tel. No. <i>616 241-4461</i>	3d. Fax No.
3e. Cell No. <i>616 822-5651</i>	3f. E-Mail Address <i>agoorhouse@mccertconcrete.com</i>
4a. Type of Establishment (Factory, mine, wholesaler, etc.) <i>Building Block Manufacturer</i>	4b. Principal product or service <i>Maker of Architectural Blocks</i>
5a. Description of Unit Involved Included: <i>All Employees of Michigan Certified Concrete</i> Excluded: <i>Office workers and Plant Superintendent</i>	5b. City and State where unit is located: <i>Grand Rapids, MI</i>

6. No. of Employees in Unit <i>7</i>	7. Do a substantial number (30% or more) of the employees in the unit no longer wish to be represented by the certified or currently recognized bargaining representative? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
8a. Name of Recognized or Certified Bargaining Agent <i>Mike Lumley General Teamsters Local #406</i>	8b. Affiliation, if any
8c. Address <i>3315 Eastern Ave SE Grand Rapids, MI 49508</i>	8d. Tel. No. <i>616-452-1551</i>
	8e. Cell No.
	8f. Fax No. <i>616-452-6364</i>
	8g. E-Mail Address <i>mlumley@teamsters406.org</i>
9. Date of Recognition or Certification <i>Date unknown probably over 40 yrs ago</i>	10. Expiration Date of Current or Most Recent Contract, if any (Month, Day, Year) <i>4-1-2021</i>

11a. Is there now a strike or picketing at the Employer's establishment(s) involved? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	11b. If so, approximately how many employees are participating?
11c. The Employer has been picketed by or on behalf of (Insert Name) <i>(Insert Address)</i>	a labor organization, of since (Month, Day, Year)
12. Organizations or individuals other than those named in items 8 and 11c, which have claimed recognition as representatives and other organizations and individuals known to have a representative interest in any employees in the unit described in item 5 above. (If none, so state)	

12a. Name <i>NONE</i>	12b. Address	12c. Tel. No.	12d. Fax No.
		12e. Cell No.	12f. E-Mail Address

13. Election Details: If the NLRB conducts an election in this matter, state your position with respect to any such election.	13a. Election Type: <input checked="" type="checkbox"/> Manual <input type="checkbox"/> Mail <input type="checkbox"/> Mixed Manual/Mail
13b. Election Date(s) <i>Fridays March 2021</i>	13c. Election Time(s) <i>1 to 4 PM</i>
	13d. Election Location(s) <i>Breakroom</i>

14. Full Name of Petitioner <i>Employees of Michigan Certified Concrete</i>	14a. Address (Street and number, city, state, ZIP code) <i>1235 Hoyt SE Grand Rapids MI 49507</i>	14b. Tel. No.	14c. Fax No.
		14d. Cell No.	14e. E-Mail Address <i>bassn505@gmail</i>

14f. Affiliation, if any
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15. Representative of the Petitioner who will accept service of all papers for purposes of the representation proceeding.

15a. Name <i>(b) (6), (b) (7)(C)</i>	15b. Title <i>(b) (6), (b) (7)(C)</i>
15c. Address <i>(b) (6), (b) (7)(C)</i>	15d. City and State where unit is located <i>(b) (6), (b) (7)(C)</i>

15e. Signature <i>(b) (6), (b) (7)(C)</i>	15f. Date Filed <i>2-19-2021</i>
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15g. Title <i>(b) (6), (b) (7)(C)</i>	15h. Date Filed <i>2-19-2021</i>
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So solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. § 151 et seq. The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing representation and related proceedings or litigation. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. Reg. 74942-43 (Dec. 13, 2006). The NLRB will further explain these uses upon request. Disclosure of this information to the NLRB is voluntary; however, failure to supply the information will cause the NLRB to decline to invoke its processes.





UNITED STATES GOVERNMENT  
NATIONAL LABOR RELATIONS BOARD

REGION 7  
Patrick V. McNamara Federal Building  
477 Michigan Avenue, Room 05-200  
Detroit, MI 48226

Agency Website: [www.nlrb.gov](http://www.nlrb.gov)  
Telephone: (313)226-3200  
Fax: (313)226-2090

March 5, 2021

Andrew Goorhouse  
Michigan Certified Concrete Products, Inc.  
1235 Hoyt Street SE  
Grand Rapids, MI 49426

Re: Michigan Certified Concrete Products, Inc  
Case 07-RD-273218

Dear Mr. Goorhouse:

This is to advise you that the Petitioner's request to withdraw the petition in the above case has been approved.

The Notice of Hearing previously issued in this matter is withdrawn and the hearing is canceled.

Very truly yours,

Terry Morgan  
Regional Director

cc:

(b) (6), (b) (7)(C)

Mike Lumley, Business Agent  
General Teamsters Local Union No. 406,  
International Brotherhood of Teamsters  
(IBT)  
3315 Eastern Avenue, SE  
Grand Rapids, MI 49508

UNITED STATES OF AMERICA  
NATIONAL LABOR RELATIONS BOARD  
RD PETITION

DO NOT WRITE IN THIS SPACE

Case No.  
07-RD-276540Date Filed  
5-3-2021

**INSTRUCTIONS:** Unless e-Filed using the Agency's website, [www.nlrb.gov](http://www.nlrb.gov), submit an original of this Petition to an NLRB office in the Region in which the employer concerned is located. The petition must be accompanied by both a showing of interest (see 7 below) and a certificate of service showing service on the employer and all other parties named in the petition of: (1) the petition; (2) Statement of Position form (Form NLRB-505); and (3) Description of Representation Case Procedures (Form NLRB 4812). The showing of interest should only be filed with the NLRB and should not be served on the employer or any other party.

1. **PURPOSE OF THIS PETITION:** RD-DECERTIFICATION (REMOVAL OF REPRESENTATIVE) - A substantial number of employees assert that the certified or currently recognized bargaining representative is no longer their representative. The Petitioner alleges that the following circumstances exist and requests that the National Labor Relations Board proceed under its proper authority pursuant to Section 9 of the National Labor Relations Act.

2a. Name of Employer <b>Wellspring</b>		2b. Address(es) of Establishment(s) involved (Street and number, city, state, ZIP code) <b>725 W. Genesee St. Frankenmuth, MI 49734</b>	
3a. Employer Representative - Name and Title <b>Haley Hadaway Registered nurse</b>		3b. Address (If same as 2b - state same) <b>Same</b>	
3c. Tel. No. <b>989-233-0287</b>	3d. Fax No. <b>N/A</b>	3e. Cell No. <b>989-233-0287</b>	3f. E-Mail Address <b>haley.hadaway@yahoo.com</b>
4a. Type of Establishment (Factory, mine, wholesaler, etc.) <b>Long-term rehab facility</b>		4b. Principal product or service	
5a. Description of Unit Involved Included: <b>Nursing &amp; social work</b> Excluded:		5b. City and State where unit is located: <b>Frankenmuth, MI</b>	

6. No. of Employees in Unit <b>17</b>	7. Do a substantial number (30% or more) of the employees in the unit no longer wish to be represented by the certified or currently recognized bargaining representative? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No		
8a. Name of Recognized or Certified Bargaining Agent <b>Berteen Ewiler - UAW</b>		8b. Affiliation, if any	
8c. Address		8d. Tel. No.	8e. Cell No.
		8f. Fax No.	8g. E-Mail Address <b>BEwiler@uaw.net</b>
9. Date of Recognition or Certification		10. Expiration Date of Current or Most Recent Contract, if any (Month, Day, Year) <b>7/9/2021</b>	
11a. Is there now a strike or picketing at the Employer's establishment(s) involved? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		11b. If so, approximately how many employees are participating?	
11c. The Employer has been picketed by or on behalf of (Insert Name) (Insert Address)		a labor organization, of since (Month, Day, Year)	

12. Organizations or individuals other than those named in items 8 and 11c, which have claimed recognition as representatives and other organizations and individuals known to have a representative interest in any employees in the unit described in item 5 above. (If none, so state)			
12a. Name	12b. Address	12c. Tel. No.	12d. Fax No.
		12e. Cell No.	12f. E-Mail Address

13. Election Details: If the NLRB conducts an election in this matter, state your position with respect to any such election.		13a. Election Type: <input checked="" type="checkbox"/> Manual <input type="checkbox"/> Mail <input type="checkbox"/> Mixed Manual/Mail	
13b. Election Date(s)	13c. Election Time(s)	13d. Election Location(s)	

14. (b) (6), (b) (7)(C)			
14b. Tel. No.		14c. Fax No.	
(b) (6), (b) (7)(C)		(b) (6), (b) (7)(C)	

14f. Affiliation, if any			
15. Representative of the Petitioner who will accept service of all papers for purposes of the representation proceeding.			
15(b) (6), (b) (7)(C)			
15c. Tel. No.		15d. Fax No.	
(b) (6), (b) (7)(C)		(b) (6), (b) (7)(C)	

I declare that I have read the above and that the information is true to the best of my knowledge and belief.			
Signature: (b) (6), (b) (7)(C)		Signature: (b) (6), (b) (7)(C)	
Date Filed: <b>4/30/21</b>		SECTION 1001	



UNITED STATES GOVERNMENT  
NATIONAL LABOR RELATIONS BOARD

REGION 7  
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Agency Website: [www.nlrb.gov](http://www.nlrb.gov)  
Telephone: (313)226-3200  
Fax: (313)226-2090

May 18, 2021

(b) (6), (b) (7)(C)

Re: Lutheran Homes of Michigan d/b/a  
Wellspring Lutheran Services  
Case 07-RD-276540

Dear (b) (6), (b) (7)(C):

The above-captioned case, petitioning for an investigation and determination of representative under Section 9(c) of the National Labor Relations Act, has been carefully investigated and considered.

**Decision to Dismiss:** As a result of the investigation, I find that further proceedings are unwarranted. The investigation disclosed that Lutheran Homes of Michigan d/b/a Wellspring Lutheran Services (the Employer) is a health care institution within the meaning of Section 2(14) of the Act. The Employer and International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW), AFL-CIO, and its Local 467 (the Union), are parties to an extant collective-bargaining agreement (Agreement) that is effective on its face from July 10, 2018 through July 9, 2021. The Agreement covers the employees encompassed by the petition in this matter.

The parties to an agreement which is approaching its expiration date are provided with a 60-day "insulated period" during which petitions may not be filed in order to afford the parties to an expiring contract an opportunity to negotiate without the disruption of a rival petition. *Deluxe Metal Furniture*, 121 NLRB 995, 1000 (1958); *Crompton Co.*, 260 NLRB 417, 418 (1981). There is a "window period" during which petitions may be filed prior to the commencement of the insulated period. The window period is generally 60-90 days prior to the expiration of the contract. *Crompton*, at 418. However, with respect to health care institutions, the open period during which a petition may be filed is more than 90 days but not over 120 days before the terminal date of any agreement, which is followed by an insulated period during which no petition can be timely filed. *Trinity Lutheran Hospital*, 218 NLRB 199 (1975).

In 1974 Congress enacted Section 2(14) to give the Board jurisdiction over "health care institutions." These institutions are defined as "any hospital, convalescent hospital, health maintenance organization, health clinic, nursing home, extended care facility or other institution devoted to the care of sick, infirm or aged persons." *Trinity Lutheran Hosp.*, 218 NLRB 199 (1975). Since the Employer is engaged in the health care industry, the window period when petitions could be filed would be 90-120 days prior to the expiration of a 3-year contract. The contract herein expires July 9, 2021. Thus, the window period in which to timely file a petition

in this matter ran from March 12 through April 10, 2021. As the petition was filed on May 3, 2021, it is, therefore, untimely.

Accordingly, I am dismissing the petition in this matter.

***Right to Request Review:*** Pursuant to Section 102.67 of the National Labor Relations Board's Rules and Regulations, you may obtain a review of this action by filing a request with the Executive Secretary, National Labor Relations Board, 1015 Half Street SE, Washington, DC 20570-0001. A copy of the request for review must be served on each of the other parties, as well as on the undersigned, in accordance with the requirements of the Board's Rules and Regulations. The request for review must contain a complete statement of the facts and reasons on which it is based.

***Procedures for Filing Request for Review:*** Pursuant to Section 102.5 of the Board's Rules and Regulations, a request for review must be filed by electronically submitting (E-Filing) it through the Agency's web site ([www.nlrb.gov](http://www.nlrb.gov)), unless the party filing the request for review does not have access to the means for filing electronically or filing electronically would impose an undue burden. A request for review filed by means other than E-Filing must be accompanied by a statement explaining why the filing party does not have access to the means for filing electronically or filing electronically would impose an undue burden. Section 102.5(e) of the Board's Rules do not permit a request for review to be filed by facsimile transmission. A copy of the request for review must be served on each of the other parties to the proceeding, as well as on the undersigned, in accordance with the requirements of the Board's Rules and Regulations. The request for review must comply with the formatting requirements set forth in Section 102.67(i)(1) of the Board's Rules and Regulations. Detailed instructions for using the NLRB's E-Filing system can be found in the [E-Filing System User Guide](#).

A request for review must be received by the Executive Secretary of the Board in Washington, DC, by close of business (**5 p.m. Eastern Time**) on **June 2, 2021**, unless filed electronically. If filed electronically, it will be considered timely if the transmission of the entire document through the Agency's website is **accomplished by no later than 11:59 p.m. Eastern Time on June 2, 2021**.

Filing a request for review electronically may be accomplished by using the E-Filing system on the Agency's website at [www.nlrb.gov](http://www.nlrb.gov). Once the website is accessed, click on **E-File Documents**, enter the NLRB Case Number, and follow the detailed instructions. The responsibility for the receipt of the request for review rests exclusively with the sender. A failure to timely file the request for review will not be excused on the basis that the transmission could not be accomplished because the Agency's website was off line or unavailable for some other reason, absent a determination of technical failure of the site, with notice of such posted on the website.

Upon good cause shown, the Board may grant special permission for a longer period within which to file a request for review. A request for extension of time, which must also be filed electronically, should be submitted to the Executive Secretary in Washington, and a copy of

such request for extension of time should be submitted to the Regional Director and to each of the other parties to this proceeding. A request for an extension of time must include a statement that a copy has been served on the Regional Director and on each of the other parties to this proceeding in the same manner or a faster manner as that utilized in filing the request with the Board.

Any party may, within 5 business days after the last day on which the request for review must be filed, file with the Board a statement in opposition to the request for review. An opposition must be filed with the Board in Washington, DC, and a copy filed with the Regional Direction and copies served on all the other parties. The opposition must comply with the formatting requirements set forth in §102.67(i)(1). Requests for an extension of time within which to file the opposition shall be filed pursuant to §102.2(c) with the Board in Washington, DC, and a certificate of service shall accompany the requests. The Board may grant or deny the request for review without awaiting a statement in opposition. No reply to the opposition may be filed except upon special leave of the Board.

Very truly yours,

A handwritten signature in black ink, appearing to read "Terry Morgan". The signature is fluid and cursive, with the first name "Terry" and last name "Morgan" clearly distinguishable.

Terry Morgan  
Regional Director

MC-G:kar

cc: Office of the Executive Secretary (by e-mail)

Joanne Paul  
Wellspring Lutheran Services  
725 West Genesee Street  
Frankenmuth, MI 48734

Kenneth Gonko, Esq.  
Danielson Group P.C.  
55951 Gratiot Avenue  
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and Agricultural Implement Workers of America  
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2104 Farmer Street  
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James A. Britton, Associate General Counsel  
International Union, United Automobile, Aerospace  
and Agricultural Implement Workers of America  
(UAW), AFL-CIO  
Law Department  
8000 East Jefferson Avenue  
Detroit, MI 48214-3963



UNITED STATES OF AMERICA  
NATIONAL LABOR RELATIONS BOARD  
**RC PETITION**

DO NOT WRITE IN THIS SPACE

Case No.

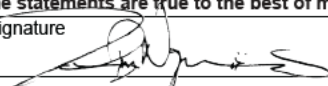
10-RC-275718

Date Filed

04-16-2021

**INSTRUCTIONS:** Unless e-Filed using the Agency's website, [www.nlr.gov/](http://www.nlr.gov/), submit an original of this Petition to an NLRB office in the Region in which the employer concerned is located. The petition must be accompanied by both a showing of interest (see 6b below) and a certificate of service showing service on the employer and all other parties named in the petition of: (1) the petition; (2) Statement of Position form (Form NLRB-505); and (3) Description of Representation Case Procedures (Form NLRB 4812). The showing of interest should only be filed with the NLRB and should not be served on the employer or any other party.

**1. PURPOSE OF THIS PETITION: RC-CERTIFICATION OF REPRESENTATIVE** - A substantial number of employees wish to be represented for purposes of collective bargaining by Petitioner and Petitioner desires to be certified as representative of the employees. **The Petitioner alleges that the following circumstances exist and requests that the National Labor Relations Board proceed under its proper authority pursuant to Section 9 of the National Labor Relations Act.**

<b>2a. Name of Employer:</b> Diversified Protection Corporation		<b>2b. Address(es) of Establishment(s) involved (Street and number, City, State, ZIP code):</b> 2121 Eisenhower Ave, Suite 500, Alexandria, VA 22314	
<b>3a. Employer Representative - Name and Title:</b> Kristine Utz, Labor Relations Manager		<b>3b. Address (if same as 2b - state same):</b> SAME	
<b>3c. Tel. No.</b> 301-710-0670	<b>3d. Cell No.</b> 443-695-1298	<b>3e. Fax No.</b> 301-710-0671	<b>3f. E-Mail Address</b> kristine.utz@dpcsecurity.com
<b>4a. Type of Establishment (Factory, mine, wholesaler, etc.)</b>		<b>4b. Principal Product or Service</b>	<b>5a. City and State where unit is located:</b> Statewide, South Carolina
<b>5b. Description of Unit Involved:</b> <b>Included:</b> See attached <b>Excluded:</b> See attached			<b>6a. Number of Employees in Unit:</b> 70 <b>6b. Do a substantial number (30% or more) of the employees in the unit wish to be represented by the Petitioner?</b> <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
<b>Check One:</b> <input type="checkbox"/> 7a. Request for recognition as Bargaining Representative was made on (Date) _____ and Employer declined recognition on or about (Date) _____ (If no reply received, so state). <input type="checkbox"/> 7b. Petitioner is currently recognized as Bargaining Representative and desires certification under the Act.			
<b>8a. Name of Recognized or Certified Bargaining Agent (If none, so state)</b> Protection and Response Officers of America		<b>8b. Address:</b> 1870 The Exchange, SE, Suite 200, Atlanta, GA 30339	
<b>8c. Tel. No.</b> 888-889-7762	<b>8d. Cell No.</b>	<b>8e. Fax No.</b> 888-886-7762	<b>8f. E-Mail Address</b> admin@proaunion.org
<b>8g. Affiliation, if any:</b> Unknown		<b>8h. Date of Recognition or Certification</b> Unknown	<b>8i. Expiration Date of Current or Most Recent Contract, if any (Month, Day, Year)</b> 09, 30, 2022
<b>9. Is there now a strike or picketing at the Employer's establishment(s) involved?</b> No <input checked="" type="checkbox"/> If so, approximately how many employees are participating? _____ (Name of Labor Organization) _____, has picketed the Employer since (Month, Day, Year) _____			
<b>10. Organizations or individuals other than Petitioner and those named in items 8 and 9, which have claimed recognition as representatives and other organizations and individuals known to have a representative interest in any employees in the unit described in item 5b above. (If none, so state)</b> None			
<b>10a. Name</b>	<b>10b. Address</b>	<b>10c. Tel. No.</b>	<b>10d. Cell No.</b>
		<b>10e. Fax No.</b>	<b>10f. E-Mail Address</b>
<b>11. Election Details:</b> If the NLRB conducts and election in this matter, state your position with respect to any such election:		<b>11a. Election Type:</b> <input type="checkbox"/> Manual <input checked="" type="checkbox"/> Mail <input type="checkbox"/> Mixed Manual/Mail	
<b>11b. Election Date(s):</b> ASAP	<b>11c. Election Time(s):</b> ASAP	<b>11d. Election Location(s):</b> USPS Mail	
<b>12a. Full Name of Petitioner (including local name and number):</b> Federal Contract Guards of America		<b>12b. Address (street and number, city, State and ZIP code):</b> 445 Park Ave, New York, NY 10022	
<b>12c. Full name of national or international labor organization of which Petitioner is an affiliate or constituent (if none, so state):</b>			
<b>12d. Tel. No.</b> 212-541-3753	<b>12e. Cell No.</b>	<b>12f. Fax No.</b> 646-786-4790	<b>12g. E-Mail Address</b> memberservices@fcgoa.com
<b>13. Representative of the Petitioner who will accept service of all papers for purposes of the representation proceeding.</b>			
<b>13a. Name and Title:</b> Kim Nguyen, Vice President/Legal Counsel		<b>13b. Address (street and number, city, State and ZIP code):</b> 445 Park Ave, 9th floor, New York, NY 10022	
<b>13c. Tel. No.</b> 212-541-3753	<b>13d. Cell No.</b> 917-747-8338	<b>13e. Fax No.</b> 646-786-4790	<b>13f. E-Mail Address</b> KNGUYEN@FCGOA.com
<b>I declare that I have read the above petition and that the statements are true to the best of my knowledge and belief.</b>			
<b>Name (Print)</b> Kim Nguyen	<b>Signature</b> 	<b>Title</b> Vice President/Legal Counsel	<b>Date</b> 4/15/2021

**WILLFUL FALSE STATEMENTS ON THIS PETITION CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)**  
**PRIVACY ACT STATEMENT**

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. § 151 et seq. The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing representation and related proceedings or litigation. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. Reg. 74942-43 (Dec. 13, 2006). The NLRB will further explain these uses upon request. Disclosure of this information to the NLRB is voluntary; however, failure to supply the information may cause the NLRB to decline to invoke its processes.

## **Diversified Protection Corporation – RC Petition - ADDENDUM**

5b.

### Included:

All full-time and regular part-time armed and unarmed security officers performing guard duties, as defined by section 9(b)(3) of the NLRA, working for the employer and its subcontractor, on its government contract with FPS.

### Excluded:

All other employees, including administrative, clerical, and non-guards, as defined by the NLRA, as amended.



**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 10**

**DIVERSIFIED PROTECTION CORPORATION  
Employer**

**and**

**Case 10-RC-275718**

**FEDERAL CONTRACT GUARDS OF AMERICA  
Petitioner**

**and**

**THE PROTECTION AND RESPONSE OFFICERS  
OF AMERICA, INC.  
Intervenor**

**DECISION AND ORDER**

**I. INTRODUCTION**

On April 16, 2021, the Petitioner, Federal Contract Guards of America, filed a representation petition pursuant to Section 9(c) of the National Labor Relations Act, seeking to represent security officers of the Employer, Diversified Protection Corporation, throughout the State of South Carolina. The Intervenor, The Protection and Response Officers of America, Inc., requests that the petition be dismissed, asserting that it currently represents the petitioned-for unit as the incumbent union and has a three-year collective-bargaining agreement (contract) currently in effect with the Employer. The Employer has taken no position in this matter.<sup>1</sup>

A hearing officer of the National Labor Relations Board conducted a hearing in this matter on May 6, 2021, via videoconference.<sup>2</sup> Pursuant to the provisions of Section 3(b) of the Act, I have the authority to decide this matter.

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<sup>1</sup> The parties stipulated that the only two issues in this case are (1) whether the Board's contract-bar policy applied, and (2) whether the petition was timely. I note that, under the circumstances of this case, these two issues are one and the same. Here, the Employer and Intervenor's contract is, by its terms, in effect from September 16, 2019, through September 30, 2022, and the Petitioner filed its petition during this period. As further detailed in this decision, if a contract bar exists, the petition is untimely. However, if no contract bar exists because either the contract or the Intervenor's status as a bargaining representative is invalid, the petition is timely.

<sup>2</sup> Both parties submitted post-hearing briefs. The Petitioner moved to strike the Intervenor's brief from the record on the basis that the Intervenor's brief was untimely. Pursuant to Section 102.2 of the Board's Rules and Regulations, e-filed documents must be received by 11:59 p.m. Here, the hearing officer advised the parties that briefs would be due May 13, 2021. The Intervenor submitted its brief by e-mail to the hearing officer in this case at midnight (12 a.m.) on May 14. Thus, the Intervenor's brief is untimely.

Having considered the entire record, I conclude the Employer and the Intervenor have a valid contract in effect from 2019 through 2022, and this contract bars the Petitioner’s petition. Accordingly, I will dismiss the petition. To give context for my discussion of this matter, I begin with facts related to the Employer’s operations, the Intervenor’s history with the bargaining unit, and the Employer and Intervenor’s bargaining history. Next, I review the Petitioner’s position and evidence. I then discuss the relevant Board law and its application to the facts in this case. I conclude with a dismissal of the petition.

## **II. FACTS**

### **A. The Employer’s Operations**

The Employer is a Virginia corporation that provides professional security services. Since October 2018, the Employer has provided security services at more than 50 federal government properties throughout South Carolina.<sup>3</sup> The Employer succeeded another security contractor, FJC Security Services, in providing security services to the federal properties. At hearing, the parties stipulated that the Employer is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

The Employer has approximately 75 employees in the unit at issue.

### **B. The Intervenor**

I take administrative notice of the Board’s certification of representative of the employees at issue.<sup>4</sup> The Acting Regional Director of Region 10 issued the certification on March 7, 2016. FJC Security Services was then the employees’ employer.

The evidence shows that Kenneth White has been the Intervenor’s local union president since 2016 and that the Employer discharged White on December 31, 2018. White testified that the Intervenor appointed him an international representative about the end of 2018, prior to his discharge.

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In any event, I note that the parties’ post-hearing briefs were of little value in deciding this matter, as the briefs only summarized a portion of the facts presented at hearing, and the briefs contained no citations to any caselaw.

<sup>3</sup> The Employer’s labor relations manager testified that the Employer provides security services to “50-something buildings across ... South Carolina.”

<sup>4</sup> The record contains the Employer and the Intervenor’s recent contract. In the contract, the parties define “employee” as “armed and unarmed security officers employed by [the Employer] performing guard duties as defined by Section 9(b)(3) of the National Labor Relations Act, as certified by the NLRB Case No. 10-RC-167961 assigned to federal facilities throughout the State of South Carolina.”

### **C. The Employer and Intervenor’s Bargaining History**

As noted, the Employer has provided security services in South Carolina since 2018. Per testimony of its labor relations manager, prior to March 4, 2019, the Employer learned that the Intervenor had represented its employees. Kenneth White informed the Employer of the employees’ bargaining representative during his onboarding with the Employer. The record shows that the Employer’s labor relations manager e-mailed the Intervenor’s former general counsel – who was also the Intervenor’s chief negotiator for contract bargaining – on March 4, 2019, to ask about dates to begin bargaining for a new contract.

In his March 4 e-mail, the labor relations manager e-mail explained that the Employer had recognized “the economics in the existing agreement between FJC Security Services, Inc. and [the Intervenor].” The labor relations manager also noted that the Intervenor had filed “a few” grievances, and the Employer sought “to mitigate any escalation of non-economic issue(s)” by quickly entering into bargaining for a successor contract. The Intervenor’s former general counsel replied to the labor relations manager, indicating that the Intervenor could begin bargaining in June. The former general counsel also asked about the Employer’s interest in discussing the grievance matters by telephone during the month of March.

The Employer and the Intervenor engaged in bargaining for a successor contract over two days in June 2019. The Employer’s lead negotiator was its labor relations manager.<sup>5</sup> The Intervenor’s committee consisted of White, the Intervenor’s local vice president, and the Intervenor’s then general counsel. The Intervenor’s general counsel, who was the Intervenor’s lead negotiator, participated by telephone. The parties reached an agreement, which the parties signed on September 16, 2019. The labor relations manager signed for the Employer. Because the Intervenor’s then general counsel was remote, White signed for the Intervenor. The contract’s term runs September 16, 2019, through September 30, 2022.

The Employer’s labor relations manager testified that, since the execution of the successor contract, White has continued to process grievances at various levels.

### **III. THE PETITIONER’S POSITION & EVIDENCE**

The Petitioner principally has two arguments: (1) the Intervenor’s local union president, White, was discharged by the Employer prior to the successor contract’s execution, and White was not otherwise authorized to sign the successor contract for the Intervenor; and (2) the Intervenor does not have legal authority to represent employees because it has effectively abandoned the bargaining unit and was dissolved as a nonprofit corporation in Georgia.

The Petitioner presented two witnesses, the local union vice president and a local union steward,<sup>6</sup> who are also current employees of the Employer. In addition to some of the facts

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<sup>5</sup> The Intervenor’s local union vice president testified that a Mr. Wolfe, the Employer’s vice president of operations, was also present at bargaining for the Employer.

<sup>6</sup> The record is somewhat unclear as to whether the local union vice president and local union steward still occupied their positions with the Intervenor’s local union at the time of the hearing

already reviewed in the previous section of this decision, the Petitioner's evidence reflects the following facts:

- The Intervenor sent automated e-mails to unit members with instructions on filing grievances and contact information for the Intervenor. The local union vice president testified that, when trying to call the Intervenor's listed telephone number, he received no response to messages he left.<sup>7</sup>
- Georgia's secretary of state signed a Certificate of Administrative Dissolution/Revocation on August 26, 2019, noting that The Protection & Response Officers of America, Inc, a Domestic Nonprofit Corporation, either (a) was involuntarily or administratively dissolved, or (b) had its certificate of authority revoked. The Petitioner notes on brief that the Intervenor never registered in another state.
- White holds himself out to employees and the Employer as the local union president. The local union vice president testified that White continued to be the president throughout contract negotiations, which occurred after White's discharge.
- Employees have not participated in any elections to elect White or any other person to a leadership position in the Intervenor's local union. The Petitioner's witnesses testified that the Intervenor had appointed them to their local union positions as vice president and steward.
- The local union vice president testified generally that he discussed contract issues and employees' disciplinary matters with White. The local union vice president also testified to having last filed a grievance with White between three to six months prior to the hearing in this matter.
- The local union vice president was permitted to represent employees in union matters after the Employer's contract manager received verification from the Intervenor of the local union vice president's position within the local union. The record does not reflect when this occurred.

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in this matter. Both witnesses testified in the past tense to having those positions; however, the record does not reflect when, if ever, they ceased to hold their local union positions. For the purpose of this decision, I refer to them by these titles.

<sup>7</sup> At hearing, the Intervenor's representative initially attempted to submit into the record rebuttal evidence regarding the Intervenor's attempts to communicate with the local union vice president in response to the vice president's calls. However, the hearing officer noted that such evidence would not "make or break the case," and the Intervenor did not proceed with such rebuttal. As I discuss later in this decision, even if the Intervenor had presented such evidence, it ultimately would have no bearing this case.

- Sometime in 2020, during a virtual Zoom meeting for all employees, White announced the appointment of the local union steward.

#### IV. DISCUSSION

The Petitioner asserts that (1) Kenneth White, the Intervenor’s signatory to the contract was not authorized to sign for the Intervenor, and (2) the Intervenor does not have the legal authority to represent employees because it was administratively dissolved in Georgia and has effectively abandoned its representational duties. The Intervenor seeks dismissal of the petition in this case, arguing that its current contract with the Employer serves as a bar to the petition. Having fully considered the parties’ positions and the record evidence, I find that the Intervenor and the Employer’s contract is valid, the Intervenor is neither unauthorized to represent employees and nor otherwise defunct, and a contract bar exists under the Board’s contract-bar doctrine.

The Board’s contract-bar doctrine balances the competing aims of employee free choice and industrial stability. *Seton Medical Center*, 317 NLRB 87, 88 (1995). This doctrine affords contracting parties and employees a reasonable period of stability in their relationship without interruption and, at the same time, affords employees the opportunity to change or eliminate their bargaining representative at reasonable times if they wish to do so. The burden of proving a contract bar is on the party asserting the doctrine. *Roosevelt Memorial Park, Inc.*, 187 NLRB 517 (1970). In considering whether a contract is sufficiently adequate to bar a rival petition, the Board has set forth the following factors:<sup>8</sup>

1. The contract must be reduced to writing.
2. The contract must be signed by all parties before the rival petition is filed. The parties’ signatories must be authorized to sign for each party.
3. The contract must contain substantial terms and conditions of employment sufficient to stabilize the bargaining relationship.
4. The contract must clearly, by its terms, encompass the employees involved in the petition.
5. The contract must cover an appropriate unit.

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<sup>8</sup> For factors one through five, see *Appalachian Shale Products, Co.*, 121 NLRB 1160 (1958). For factor six, see *General Cable Corp.*, 139 NLRB 1123 (1962). The Board may consider a number of additional factors as necessary. Here, I only review the factors which are relevant to the present matter. Factors of consideration that are not relevant in this present case include whether (1) the contract serves only union members, (2) the contract is a master agreement covering multiple plants or employers, (3) the contract requires ratification and has been ratified, (4) the contract was executed before any employees were hired or prior to a substantial increase in personnel, and (5) the nature of the unit has changed.

6. The contract in question may only serve as a bar for, at most, a three-year period.

I note that the Petitioner has not clarified the statute or caselaw under which the Intervenor lacks “legal” authority to represent employees. At hearing, the parties stipulated that Intervenor is a labor organization as defined in Section 2(5) of the Act; accordingly, I need not consider whether Intervenor meets the Board’s test for labor organization status. Based on the Petitioner’s evidence regarding the Intervenor’s registered status in Georgia and the Petitioner’s statement in its brief that White’s firing left the bargaining unit without representation, I consider whether the Intervenor is defunct.

The Board will not find that a contract bars a rival petition if the contracting labor organization is defunct. *Hershey Chocolate Corp.*, 121 NLRB 901, 911 (1958); *International Harvester Co.*, 111 NLRB 276 (1955). A representative is deemed defunct if it “is unable or unwilling to represent the employees.” However, “mere temporary inability to function does not constitute defunctness; nor is the loss of all members in the unit the equivalent of defunctness if the representative otherwise continues in existence and is willing and able to represent the employees.” *Hershey Chocolate* at 911. The “relative inactivity” of the union is irrelevant to a defunctness determination. *Kent Corp.*, 272 NLRB 735, 736 (1984); *Rocky Mountain Hospital*, 289 NLRB 1347 (1988).

Below, I consider whether the Employer and Intervenor’s contract is sufficiently adequate to bar to the petition in this case under the Board’s contract-bar doctrine, including whether White was authorized to sign the contract for the Intervenor. I then consider whether the Intervenor is defunct.

**A. The Employer and Intervenor’s Contract Is Sufficiently Adequate to Bar the Present Petition**

The Petitioner argues that only one of the contract factors listed above – that the Intervenor’s signatory White was unauthorized – prevents the contract from serving as a bar to its petition. Nonetheless, I will nevertheless review the other factors.

The record evidence shows that the Employer and Intervenor’s contract is in writing and was signed on September 16, 2019, prior to the filing of the present petition on April 16, 2021. The contract contains substantial terms and conditions of employment sufficient to stabilize the bargaining relationship, including provisions for wages, hours of work, management rights, and grievance and arbitration procedures. The contract encompasses the employees at issue, describing the employees as those whom the Board previously found to be represented by the Intervenor in Case 10-RC-167961, and the unit at issue is an appropriate unit of guards, as described in the certification of representative in that same case. The Employer and the Intervenor’s contract runs three years from September 16, 2019, through September 30, 2022.

The only factor in dispute is whether the contract was signed by individuals whom the contracting parties had authorized. There is no dispute that the Employer and Intervenor’s contract was signed, but the Petitioner argues that White was not authorized to sign for the Intervenor. The evidence suggests otherwise. White testified, without contradiction, that he and

the Intervenor discussed his appointment as an international representative for the Intervenor prior to his firing, and he assumed the position of an international representative toward the end of 2018. White and the Employer's labor relations manager also testified that White served on the bargaining committee for the Intervenor, and White signed the contract in lieu of the Intervenor's lead negotiator, who could only be participate by telephone. Although the Petitioner's witnesses testified that they saw no written proof of White's positions with the Intervenor, either as local union president or international representative, both witnesses continued to work with White on union matters, following White's discharge, as did the Employer. Additionally, both witnesses testified that they considered White to be the local union president following his discharge. Based on this evidence, I find that White was authorized as a representative for the Intervenor when he signed the contract on September 16, 2019.

Accordingly, I find that the Employer and the Intervenor's contract is sufficiently adequate to bar the petition in this matter.

## **B. The Intervenor is Not Defunct**

The Board has placed an extraordinarily high burden on a party attempting to establish that a union is defunct. *Art's Way Vessels, Inc.*, 355 NLRB 1142, 1149 (2010). For example, in *Kent Corp.*, above at 735-736, the Board refused to find a union defunct based on testimony of a union official that the union was willing to represent the unit employees and there was no evidence that the union "was called on and failed to act on unit employees' behalf," despite the union having no members, membership applications, initiation fees, dues, treasury, bank account, books or records, meetings, recent (if any) election of officers, or information available to employees regarding contract negotiations or attempts to enforce the collective bargaining agreement.

The Petitioner essentially has argued that the Intervenor's dissolution in Georgia is evidence that the Intervenor is defunct. However, neither the Act nor any caselaw supports such a finding. Indeed, a lack of structural formality – such as the absence of a constitution or bylaws – does not disqualify a union as a labor organization *Butler Mfg. Co.*, 167 NLRB 308 (1967). The Board will find that a union meets the definition of a labor organization under Section 2(5) of the Act when (1) employees participate in the organization; (2) the organization exists, at least in part, for the purpose of dealing with the employer; and (3) such dealings must concern "grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work." *Vencare Ancillary Services*, 334 NLRB 965, 969 (2001); *Electromation, Inc.*, 309 NLRB 990, 994 (1992). Neither party disputes the Intervenor's status as a labor organization; indeed, the parties stipulated that the Intervenor is a labor organization.<sup>9</sup> Accordingly, I am unpersuaded by the Petitioner's argument that evidence of the Intervenor's dissolution in Georgia renders the Intervenor defunct.

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<sup>9</sup> The record also supports finding that the Intervenor is a labor organization. The record contains evidence of employee participation (for example, the local union vice president and local union steward are employees, and the employees participated in a Zoom meeting with White in 2020), and of the Intervenor's dealings with the Employer on wages, rates of pay, hours of employment, or conditions of work through its contract negotiations and grievances.



The Petitioner also argues that the Employer's discharge of White left the unit without its primary representative. Seemingly in support of this argument, the Petitioner's witnesses, the local union vice president and steward, testified to a lack of communication with the Intervenor's main office. However, as summarized in the above facts and the Petitioner's own evidence, these same witnesses continued to have interactions with White concerning grievances after White's discharge. Furthermore, the Employer's labor relations manager testified that White has continued to process grievances at various levels since the execution of the Employer and Intervenor's contract, which also occurred after White's discharge. Based on this evidence and my earlier finding that White was authorized as a representative for the Intervenor, I find that the Intervenor has had the ability to represent employees, has been willing to represent employees, and has actually represented employees. Accordingly, I find that the Intervenor is not defunct.

## **V. CONCLUSION**

Having concluded that the Employer and the Intervenor's contract is valid, with a three-year term lasting through September 30, 2022, and that the Intervenor is not defunct, I find that the Employer and the Intervenor's contract is a bar to the present petition. Accordingly, the petition is dismissed.

## **RIGHT TO REQUEST REVIEW**

Pursuant to Section 102.67 of the Board's Rules and Regulations, a request for review may be filed with the Board at any time following the issuance of this Decision until 10 business days after a final disposition of the proceeding by the Regional Director. The request for review must conform to the requirements of Section 102.67 of the Board's Rules and Regulations.

Pursuant to Section 102.5 of the Board's Rules and Regulations, a request for review must be filed by electronically submitting (E-Filing) it through the Agency's web site ([www.nlr.gov](http://www.nlr.gov)), unless the party filing the request for review does not have access to the means for filing electronically or filing electronically would impose an undue burden. A request for review filed by means other than E-Filing must be accompanied by a statement explaining why the filing party does not have access to the means for filing electronically or filing electronically would impose an undue burden. Section 102.5(e) of the Board's Rules and Regulations does not permit a request for review to be filed by facsimile transmission. A copy of the request for review must be served on each of the other parties to the proceeding, as well as on the undersigned, in accordance with the requirements of the Board's Rules and Regulations, and must be accompanied by a certificate of service.

Filing a request for review electronically may be accomplished by using the E-filing system on the Agency's website at [www.nlr.gov](http://www.nlr.gov). Once the website is accessed, click on **E-File Documents**, enter the NLRB Case Number, and follow the detailed instructions. The responsibility for the receipt of the request for review rests exclusively with the sender. A failure to timely file the request for review will not be excused on the basis that the transmission could not be accomplished because the Agency's website was offline or unavailable for some other

Diversified Protection Corp.  
Case 10–RC–275718

reason, absent a determination of technical failure of the site, with notice of such posted on the website.

Dated: May 25, 2020

A handwritten signature in black ink, appearing to read 'L. Henderson', with a long horizontal stroke extending to the right.

---

Lisa Y. Henderson, Acting Regional Director  
National Labor Relations Board, Region 10  
Peachtree Summit Federal Building  
401 W. Peachtree Street, NE Suite 2201  
Atlanta, GA 30308

UNITED STATES OF AMERICA  
NATIONAL LABOR RELATIONS BOARD  
RD PETITION

DO NOT WRITE IN THIS SPACE

Case No.

12-RD-269202

Date Filed

November 18, 2020

**INSTRUCTIONS:** Unless e-Filed using the Agency's website, [www.nlr.gov](http://www.nlr.gov), submit an original of this Petition to an NLRB office in the Region in which the employer concerned is located. The petition must be accompanied by both a showing of interest (see 7 below) and a certificate of service showing service on the employer and all other parties named in the petition of: (1) the petition; (2) Statement of Position form (Form NLRB-505); and (3) Description of Representation Case Procedures (Form NLRB 4812). The showing of interest should only be filed with the NLRB and should not be served on the employer or any other party.

**1. PURPOSE OF THIS PETITION: RD-DECERTIFICATION (REMOVAL OF REPRESENTATIVE)** - A substantial number of employees assert that the certified or currently recognized bargaining representative is no longer their representative. The Petitioner alleges that the following circumstances exist and requests that the National Labor Relations Board proceed under its proper authority pursuant to Section 9 of the National Labor Relations Act.

<b>2a. Name of Employer</b> Ranger American Armored Services, Inc.		<b>2b. Address(es) of Establishment(s) involved (Street and number, city, state, ZIP code)</b> 605 Calle Lodi Villa Capri, San Juan, PR 00924-3822	
<b>3a. Employer Representative - Name and Title</b> Raymond Delgado - Director of Operations		<b>3b. Address (If same as 2b - state same)</b> Same	
<b>3c. Tel. No.</b> (787) 999-6060	<b>3d. Fax No.</b>	<b>3e. Cell No.</b>	<b>3f. E-Mail Address</b> rdelgado@rangeramerican.com
<b>4a. Type of Establishment (Factory, mine, wholesaler, etc.)</b> Private security company headquarters		<b>4b. Principal product or service</b> Private security	
<b>5a. Description of Unit Involved</b> <b>Included:</b> Transportation drivers, armed transportation messengers, armed ATM technicians. <b>Excluded:</b> Clerical employees, Regular Facility Guards, confidential, professional, managerial, and supervisors.			<b>5b. City and State where unit is located:</b> San Juan, PR
<b>6. No. of Employees in Unit</b> 84	<b>7. Do a substantial number (30% or more) of the employees in the unit no longer wish to be represented by the certified or currently recognized bargaining representative?</b> <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No		
<b>8a. Name of Recognized or Certified Bargaining Agent</b> Union de Profesionales de la Seguridad Privada y Transporte de Valores		<b>8b. Affiliation, if any</b>	
<b>8c. Address</b> PO Box 29146 San Juan, PR 00929		<b>8d. Tel. No.</b> (787) 677-6366	<b>8e. Cell No.</b>
		<b>8f. Fax No.</b>	<b>8g. E-Mail Address</b> upsptv@gmail.com
<b>9. Date of Recognition or Certification</b> December 16, 2019		<b>10. Expiration Date of Current or Most Recent Contract, if any (Month, Day, Year)</b> December 16, 2022	
<b>11a. Is there now a strike or picketing at the Employer's establishment(s) involved?</b> <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		<b>11b. If so, approximately how many employees are participating?</b>	
<b>11c. The Employer has been picketed by or on behalf of (Insert Name)</b> (Insert Address) a labor organization, of since (Month, Day, Year)			
<b>12. Organizations or individuals other than those named in items 8 and 11c, which have claimed recognition as representatives and other organizations and individuals known to have a representative interest in any employees in the unit described in item 5 above. (If none, so state)</b>			
<b>12a. Name</b> N/A	<b>12b. Address</b> N/A	<b>12c. Tel. No.</b>	<b>12d. Fax No.</b>
		<b>12e. Cell No.</b>	<b>12f. E-Mail Address</b>
<b>13. Election Details:</b> If the NLRB conducts an election in this matter, state your position with respect to any such election.		<b>13a. Election Type:</b> <input checked="" type="checkbox"/> Manual <input type="checkbox"/> Mail <input type="checkbox"/> Mixed Manual/Mail	
<b>13b. Election Date(s)</b> December 18, 2020	<b>13c. Election Time(s)</b> 11AM-2PM	<b>13d. Election Location(s)</b> Lunch room/break room	
<b>14. Full Name of Petitioner</b> (b) (6), (b) (7)(C)			
<b>14a. Address (Street and number, city, state, ZIP code)</b> (b) (6), (b) (7)(C)		<b>14b. Tel. No.</b> (b) (6), (b) (7)(C)	<b>14c. Fax No.</b>
		<b>14d. Cell No.</b> (b) (6), (b) (7)(C)	<b>14e. E-Mail Address</b> (b) (6), (b) (7)(C)
<b>14f. Affiliation, if any</b>			
<b>15. Representative of the Petitioner who will accept service of all papers for purposes of the representation proceeding.</b>			
<b>15a. Name</b> (b) (6), (b) (7)(C)		<b>15b. Title</b> (b) (6), (b) (7)(C)	
<b>15c. Address (Street and number, city, state, ZIP code)</b> (b) (6), (b) (7)(C)		<b>15d. Tel. No.</b> (b) (6), (b) (7)(C)	<b>15e. Fax No.</b>
		<b>15f. Cell No.</b> (b) (6), (b) (7)(C)	<b>15g. E Mail Address</b> (b) (6), (b) (7)(C)
<b>I declare that I have read the above petition and that the statements are true to the best of my knowledge and belief.</b>			
<b>Name (Print)</b> (b) (6), (b) (7)(C)	<b>Sign</b> (b) (6), (b) (7)(C)	<b>Title</b> (b) (6), (b) (7)(C)	<b>Date Filed</b> 14 NOV 2020

WILLFUL FALSE STATEMENTS ON THIS PETITION ARE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)

## PRIVACY ACT STATEMENT

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. § 151 et seq. The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing representation and related proceedings or litigation. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. Reg. 74942-43 (Dec. 13, 2006). The NLRB will further explain these uses upon request. Disclosure of this information to the NLRB is voluntary; however, failure to supply the information may cause the NLRB to decline to invoke its processes.



UNITED STATES GOVERNMENT  
NATIONAL LABOR RELATIONS BOARD

REGION 12  
201 E Kennedy Blvd Ste 530  
Tampa, FL 33602-5824

Agency Website:  
[www.nlrb.gov](http://www.nlrb.gov)  
Telephone: (813)228-2470  
Fax: (813)228-2874

December 21, 2020

Angel J. Valencia, Esq.  
Glenn M. Taubman, Esq.  
National Right To Work  
Legal Defense Foundation  
8001 Braddock Rd., Suite 600  
Springfield, VA 22160-0003  
[ajv@nrtw.org](mailto:ajv@nrtw.org)  
[gmt@nrtw.org](mailto:gmt@nrtw.org)

Re: Ranger American Armored Services, Inc.  
Case 12-RD-269202

Dear Mssrs. Valencia and Tauman:

The above-captioned case, petitioning for an investigation and determination of representative under Section 9(c) of the National Labor Relations Act, has been carefully investigated and considered.

***Decision to Dismiss:*** As a result of the investigation, I find that further proceedings are not warranted and I am dismissing the petition for the following reasons:

On November 18, 2020, (b) (6), (b) (7)(C) (the Petitioner) filed the petition herein seeking to decertify Union de Profesionales de la Seguridad Privada y Transporte de Valores (the Union) as the exclusive collective-bargaining representative of the employees of Ranger American Armored Services, Inc. (the Employer) in the following unit set forth in the current collective-bargaining agreement between the Employer and the Union, which is effective by its terms from December 16, 2019 through December 16, 2022:

All regular full-time and part-time unarmed transportation drivers, armed transportation messengers, and armed ATM technicians that work for the Employer at its facility on 65<sup>th</sup> Infantry Station Avenue, in San Juan, Puerto Rico; excluding all other employees, clerical, regular facility guards, non-Ranger American Armored Services, confidential, professional, managerial, and supervisors as defined in the Act.

On December 7, 2020, I issued a Notice to Show Cause why the collective-bargaining agreement between the Employer and the Union does or does not bar the further processing of

the petition in this case under the Board's contract bar doctrine, and whether the petition should be administratively dismissed or further processed.

The existence and substance of the collective-agreement between the Employer and the Union are undisputed based on evidence that was administratively submitted in the Statements of Position filed by the Employer and the Union herein, and evidence submitted by all three parties in related Case 12-UD-258654.<sup>1</sup> The agreement between the Employer and the Union is signed by both parties, specifies that it covers the petitioned-for unit, contains substantial terms and conditions of employment, and clearly set forth its effective dates. Under the longstanding "contract bar" doctrine of the National Labor Relations Board (the Board), generally a contract with such characteristics is of "bar quality." *Appalachian Shale Products Co.*, 121 NLRB 1160 (1958).

The Statements of Position filed by the Employer and the Union herein both assert that their agreement is a bar to the further processing of the instant petition. The Petitioner, by (b) (6), Counsel, filed a response to the Notice to Show Cause. The Petitioner argues that the Board's contract bar doctrine should be fully eliminated or, in the alternative, limited to a one-year period with an open period at the beginning of the contract. The Petitioner relies on the same argument made to the Board by Counsel for the Petitioner in an unrelated case involving a contract bar issue, *Mountaire Farms, Inc.*, Case 05-RD-256888. In *Mountaire Farms*, on June 23, 2020, the Board decided to undertake a "general review of its contract bar doctrine." *Mountaire Farms* remains pending before the Board. However, the Petitioner does not dispute that under current Board law, the contract between the Employer and Union constitutes a contract bar requiring dismissal of the petition.

I find that the contract between the Employer and the Petitioner is of bar quality. An existing collective-bargaining agreement of bar quality, such as the contract between the Employer and the Union, will be found to bar an election for a period of up to three years and any representation petition that is filed during those three years will be dismissed unless the petition is filed during the appropriate window period of more than 60 days, and no more than 90 days, before the last day of the third year of the agreement. *General Cable Corp.*, 139 NLRB 1123, 1126 (1962); *Leonard Wholesale Meats, Inc.*, 136 NLRB 1000, 1001 (1962). The petition in this case was filed during the first year of the contract between the Employer and the Union, and over two years before the last day of the third year of the contract, December 15, 2022. Therefore, the petition was untimely filed.

For the above reasons, the petition is dismissed.

---

<sup>1</sup> The Union was certified as representative of the unit involved herein on July 30, 2017, in Case 12-RC-200160. As noted, the collective-bargaining agreement is effective by its terms from December 16, 2019 through December 16, 2022. On July 8, 2020, pursuant to a petition filed on March 31, 2020 in Case 12-UD-258654 by (b) (6), (b) (7)(C) who is also the Petitioner in the instant case, I certified that a majority of the eligible unit employees voted to withdraw the authority of the Union to require under the contract that employees make certain lawful payments to the Union in order to retain their jobs, in conformity with Section 8(a)(3) of the Act. Thus, the contractual union security provision is no longer in effect.

***Right to Request Review:*** Pursuant to Section 102.67 of the National Labor Relations Board's Rules and Regulations, you may obtain a review of this action by filing a request with the Executive Secretary, National Labor Relations Board, 1015 Half Street SE, Washington, DC 20570-0001. A copy of the request for review must be served on each of the other parties, as well as on the undersigned, in accordance with the requirements of the Board's Rules and Regulations. The request for review must contain a complete statement of the facts and reasons on which it is based.

***Procedures for Filing Request for Review:*** Pursuant to Section 102.5 of the Board's Rules and Regulations, a request for review must be filed by electronically submitting (E-Filing) it through the Agency's web site ([www.nlrb.gov](http://www.nlrb.gov)), unless the party filing the request for review does not have access to the means for filing electronically or filing electronically would impose an undue burden. A request for review filed by means other than E-Filing must be accompanied by a statement explaining why the filing party does not have access to the means for filing electronically or filing electronically would impose an undue burden. Section 102.5(e) of the Board's Rules do not permit a request for review to be filed by facsimile transmission. A copy of the request for review must be served on each of the other parties to the proceeding, as well as on the undersigned, in accordance with the requirements of the Board's Rules and Regulations. The request for review must comply with the formatting requirements set forth in Section 102.67(i)(1) of the Board's Rules and Regulations. Detailed instructions for using the NLRB's E-Filing system can be found in the [E-Filing System User Guide](#).

A request for review must be received by the Executive Secretary of the Board in Washington, DC, by close of business (**5 p.m. Eastern Time**) on **January 6, 2021**, unless filed electronically. If filed electronically, it will be considered timely if the transmission of the entire document through the Agency's website is **accomplished by no later than 11:59 p.m. Eastern Time on January 6, 2021**.

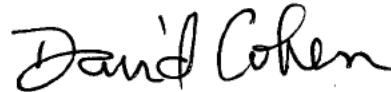
Filing a request for review electronically may be accomplished by using the E-Filing system on the Agency's website at [www.nlrb.gov](http://www.nlrb.gov). Once the website is accessed, click on **E-File Documents**, enter the NLRB Case Number, and follow the detailed instructions. The responsibility for the receipt of the request for review rests exclusively with the sender. A failure to timely file the request for review will not be excused on the basis that the transmission could not be accomplished because the Agency's website was off line or unavailable for some other reason, absent a determination of technical failure of the site, with notice of such posted on the website.

Upon good cause shown, the Board may grant special permission for a longer period within which to file a request for review. A request for extension of time, which must also be filed electronically, should be submitted to the Executive Secretary in Washington, and a copy of such request for extension of time should be submitted to the Regional Director and to each of the other parties to this proceeding. A request for an extension of time must include a statement that a copy has been served on the Regional Director and on each of the other parties to this proceeding in the same manner or a faster manner as that utilized in filing the request with the Board.



Any party may, within 5 business days after the last day on which the request for review must be filed, file with the Board a statement in opposition to the request for review. An opposition must be filed with the Board in Washington, DC, and a copy filed with the Regional Direction and copies served on all the other parties. The opposition must comply with the formatting requirements set forth in §102.67(i)(1). Requests for an extension of time within which to file the opposition shall be filed pursuant to §102.2(c) with the Board in Washington, DC, and a certificate of service shall accompany the requests. The Board may grant or deny the request for review without awaiting a statement in opposition. No reply to the opposition may be filed except upon special leave of the Board.

Very truly yours,



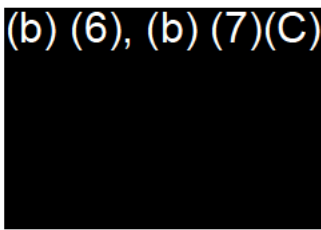
David Cohen  
Regional Director

cc: Office of the Executive Secretary  
(by electronic service)  
Raymond Delgado, Operations Manager  
Ranger American Armored Services, Inc.  
605 Calle Lodi Villa Capri  
San Juan, PR 00924-3822  
[rdelgado@rangeramerican.com](mailto:rdelgado@rangeramerican.com)

Howard Pravda, Esq.  
Goldman, Antonetti & Cordova, LLC  
American International Plaza, 15<sup>th</sup> Floor  
250 Munoz Rivera Avenue  
San Juan, PR 00918  
[hpravda@gaclaw.com](mailto:hpravda@gaclaw.com)

Iram Ramirez, Executive Director  
Unión de Profesionales de la Seguridad  
Privada y Transporte de Valores  
P.O. Box 29146  
San Juan, PR 00929-0146  
[upsptv@gmail.com](mailto:upsptv@gmail.com)

(b) (6), (b) (7)(C)





UNITED STATES OF AMERICA  
NATIONAL LABOR RELATIONS BOARD  
RD PETITION

DO NOT WRITE IN THIS SPACE

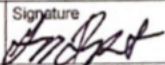
Case No.

14-RD-275984

Date Filed

April 22, 2021

INSTRUCTIONS: Unless e-Filed using the Agency's website, [www.nlrb.gov](http://www.nlrb.gov), submit an original of this Petition to an NLRB office in the Region in which the employer concerned is located. The petition must be accompanied by both a showing of interest (see 7 below) and a certificate of service showing service on the employer and all other parties named in the petition of: (1) the petition; (2) Statement of Position form (Form NLRB-505); and (3) Description of Representation Case Procedures (Form NLRB 4812). The showing of interest should only be filed with the NLRB and should not be served on the employer or any other party.

<b>1. PURPOSE OF THIS PETITION. RD-DECERTIFICATION (REMOVAL OF REPRESENTATIVE)</b> - A substantial number of employees assert that the certified or currently recognized bargaining representative is no longer their representative. The Petitioner alleges that the following circumstances exist and requests that the National Labor Relations Board proceed under its proper authority pursuant to Section 9 of the National Labor Relations Act.			
<b>2a. Name of Employer</b> Air Capitol Fire, LLC		<b>2b. Address(es) of Establishment(s) involved (Street and number, city, state, ZIP code)</b> 5841 N. Prospect Drive, Park City, KS 67204	
<b>3a. Employer Representative - Name and Title</b> Jim Richards		<b>3b. Address (if same as 2b - state same)</b> Same	
<b>3c. Tel. No.</b> 316-650-2341	<b>3d. Fax No.</b>	<b>3e. Cell No.</b> Same	<b>3f. E-Mail Address</b> Jim@aircapitolfiresprinkler.com
<b>4a. Type of Establishment (Factory, mine, wholesaler, etc.)</b> Installation, Inspection and Repair			<b>4b. Principal product or service</b> Sprinkler and Fire Safety
<b>5a. Description of Unit involved</b> <b>Included:</b> Employees performing installation, inspection and repair of sprinkler and fire safety systems <b>Excluded:</b> Management employees			<b>5b. City and State where unit is located:</b> Park City, Kansas
<b>6. No. of Employees in Unit</b> 3		<b>7. Do a substantial number (30% or more) of the employees in the unit no longer wish to be represented by the certified or currently recognized bargaining representative?</b> <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	
<b>8a. Name of Recognized or Certified Bargaining Agent</b> UA Local 669 Road Sprinkler Fitters			<b>8b. Affiliation, if any</b>
<b>8c. Address</b> 7050 Oakland Mills Road, Suite 200, Columbia, MD 21046		<b>8d. Tel. No.</b> 410-381-4300	<b>8e. Cell No.</b> NA
		<b>8f. Fax No.</b> 301-621-8045	<b>8g. E-Mail Address</b> NA@example.com
<b>9. Date of Recognition or Certification</b> Unknown		<b>10. Expiration Date of Current or Most Recent Contract, if any (Month, Day, Year)</b> March 31, 2021	
<b>11a. Is there now a strike or picketing at the Employer's establishment(s) involved?</b> <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		<b>11b. If so, approximately how many employees are participating?</b>	
<b>11c. The Employer has been picketed by or on behalf of (Insert Name)</b> (Insert Address)		<b>a labor organization, of</b> since (Month, Day, Year)	
<b>12. Organizations or individuals other than those named in items 8 and 11c, which have claimed recognition as representatives and other organizations and individuals known to have a representative interest in any employees in the unit described in item 5 above. (If none, so state)</b>			
<b>12a. Name</b> NA	<b>12b. Address</b> NA	<b>12c. Tel. No.</b> NA	<b>12d. Fax No.</b> NA
		<b>12e. Cell No.</b> NA	<b>12f. E-Mail Address</b> NA@example.com
<b>13. Election Details: If the NLRB conducts an election in this matter, state your position with respect to any such election.</b>		<b>13a. Election Type:</b> <input checked="" type="checkbox"/> Manual <input type="checkbox"/> Mail <input type="checkbox"/> Mixed Manual/Mail	
<b>13b. Election Date(s)</b> As soon as possible	<b>13c. Election Time(s)</b> During daytime business hours		<b>13d. Election Location(s)</b> Park City, Kansas
<b>14. Full Name of Petitioner</b> Gregory Davenport			
<b>14a. Address (Street and number, city, state, ZIP code)</b> 6123 S. Osage, Wichita, KS 67217		<b>14b. Tel. No.</b> 316-768-1574	<b>14c. Fax No.</b> NA
		<b>14d. Cell No.</b> Same	<b>14e. E-Mail Address</b> gdaven2011@gmail.com
<b>14f. Affiliation, if any</b> NA			
<b>15. Representative of the Petitioner who will accept service of all papers for purposes of the representation proceeding.</b>			
<b>15a. Name</b> Same		<b>15b. Title</b> Same	
<b>15c. Address (Street and number, city, state, ZIP code)</b> Same		<b>15d. Tel. No.</b> Same	<b>15e. Fax No.</b> NA
		<b>15f. Cell No.</b> Same	<b>15g. E-Mail Address</b> Same@example.com
<b>I declare that I have read the above petition and that the statements are true to the best of my knowledge and belief.</b>			
<b>Name (Print)</b> Gregory Davenport	<b>Signature</b> 	<b>Title</b> Employee	<b>Date Filed</b> 4/20/2021

WILLFUL FALSE STATEMENTS ON THIS PETITION CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)

## PRIVACY ACT STATEMENT

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**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 14**

**Air Capitol Fire LLC<sup>1</sup>**

**Employer**

**and**

**Gregory Davenport**

**Petitioner**

**and**

**UA Local Union NO. 669 Road Sprinkler Fitters,  
AFL-CIO<sup>2</sup>**

**Case 14-RD-274968**

**DECISION AND ORDER**

Petitioner seeks a decertification election in a single unit of all full-time and regular part-time employees performing installation, inspection, and repair of sprinkler and fire safety systems employed by the Employer at its Park City, Kansas facility. The unit currently consists of approximately three employees employed as sprinkler fitters.

The issue before me is whether the extended 2021-2025 collective-bargaining agreement (CBA) between National Fire Sprinkler Association, Inc (NFSA) and the Union constitutes a bar to the election under the contract bar doctrine.

The Union asserts that the Employer did not provide timely and unequivocal notice to withdraw from multiemployer bargaining and opt out of the extended 2021-2025 CBA. Accordingly, the Union seeks to have the petition dismissed because there is a contract bar to the holding of an election and the petitioned-for single employer unit is not coextensive with the existing multiemployer bargaining unit.

The Employer and Petitioner both contend that there is no contract bar because the Employer did not agree to be bound by the extended 2021-2025 CBA having provided timely and unequivocal notification to the Union of its intent to withdraw its bargaining rights from NFSA and be bound by the terms of any new multiemployer agreement. Thus, the Employer and

---

<sup>1</sup> The Employer's name appears as amended by stipulation at the hearing.

<sup>2</sup> The Union's name appears as amended by stipulation at the hearing.

Petitioner assert that as Petitioner's petition was filed after the Employer's timely withdrawal, the petitioned-for single employer unit is coextensive with the existing bargaining unit.

A hearing officer of the Board held a video hearing in this matter. As explained below, I conclude that the Employer is bound by the extended 2021-2025 CBA because its withdrawal from multiemployer bargaining was not timely and unequivocal. Accordingly, I find that there is a contract bar to the holding of the election and that the petitioned-for single unit of the Employer's employees is not appropriate because it is not coextensive with the existing multiemployer bargaining unit. I am therefore dismissing the petition.

## **I. FACTS**

### **A. Bargaining History and the Multiemployer Unit**

NFSA is a multiemployer association comprised of multiple member-employers. Although the 2016-2021 and extended 2021-2025 CBAs contained in the record both reference an attached list of contractors subject to each CBA, no such list is in the record and the record is otherwise silent as to the exact number of NFSA employer-members subject to the CBAs. On behalf of its member-employers, NFSA has bargained with the Union for successive CBAs over many years – both the 2016-2021 CBA and the current extended 2021-2025 CBA reference the parties' original April 6, 1915 CBA. Besides a reference in the CBAs that NFSA is "a body incorporated under authority from its members pursuant to its By-laws....," the record is silent as to the extent of the formal organization of NFSA.

The Employer is engaged in the business of fire sprinkler design, sales, installation, and service from its Park City, Kansas facility. In about 2018, the Employer delegated full bargaining authority to NFSA and became signatory to the CBA then in place, effective from April 1, 2016 to March 31, 2021 (the 2016-2021 CBA).

The 2016-2021 CBA contained the following language at Article 1, in pertinent part:

"The [NFSA], a body corporate under authority from its members pursuant to its By-Laws, has negotiated and signed this Agreement for and on behalf of contractors that have given the [NFSA] written authority to negotiate this [CBA], each of whom is the "Employer" party to this contract. ... It is further understood and agreed that any Employer bound by the terms of this Agreement by virtue of the authority described in the above paragraph agrees that, if the contractor withdraws its membership from NFSA or its membership is terminated for any reason, the contractor shall be bound by all the terms and conditions of the Agreement for the balance of the term of this Agreement. ..."

The 2016-2021 CBA also contained the following renewal language at Article 30, "Provisions for Renewal of Agreement:"

"Sixty (60) days prior to April 1, 2021, written notice may be given by either party requesting a conference to prepare such alterations or amendments as may be agreed to. Failing to give such written notice, this Agreement remains in force from year to year, until written notice of sixty (60) days prior to April 1 is served. Written notice shall be sent by certified mail to the [NFSA] and to the Local Union at its National Office."

In about December 2020 to January 2021,<sup>3</sup> the Union and NFSA met to negotiate and extend the 2016-2021 CBA. The Employer did not receive any notification, nor did it inquire as to the timing of these negotiations. By email dated January 8, the Union advised NFSA that the Union's negotiation team approved a tentative agreement reached during these negotiations and was prepared to present it to the Union membership for ratification. The tentative agreement reached between the Union and NFSA provided for an extension of the existing 2016-2021 agreement to March 31, 2025, as well as substantive amendments to the 2016-2021 CBA, most importantly in the area of new wage rates for 2021 to 2025 – additional changes in terms and conditions of employment of the unit employees include amendments to contractual policies governing overtime, background check and drug/alcohol use, selection and appointment of job foremen, travel expense rates, and residential work. The Union further notified its members/unit employees in January in writing<sup>4</sup> that a tentative extended CBA with “areas of change” was reached between the Union and NFSA. At the same time, the Union presented the members/unit employees with ballots to accept or reject the extended CBA and advised them to return their ballots by February 26 at which time “[t]he ballots will be counted, and the results made known as soon as possible.”

By letter dated January 18, Employer Owner Louis Robelli advised NFSA and the Union of the Employer's desire to withdraw from multiemployer bargaining via NFSA, by writing:

“...[t]he NFSA has no authority to bargain on behalf of [the Employer] and [the Employer] will not be bound by the terms of any new agreement between the NFSA and [the Union]....”

By letter dated February 22, the Union rejected Robelli's request to withdraw from multiemployer bargaining as untimely – Union representative Brian Dunn advised Robelli:

“[t]he NFSA and the Union have already negotiated amendments and an extension to the current National Agreement so that your withdrawing of authorization will not have any effect upon those amendments which will be binding upon all NFSA-represented contractors at the time those amendments were bargained.”

Dunn further advised Robelli that “[t]he amendments to the National Agreement have been sent to the Union membership for a ratification vote to be tallied this week.”

On March 1, following ratification of the extended 2021-2025 CBA by the Union membership, the tentative extended CBA was signed by the NFSA and Union and published thereafter. The 2021-2025 CBA extended the 2016-2021 CBA to March 31, 2025.

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<sup>3</sup> All dates hereafter are in 2021 unless otherwise stated.

<sup>4</sup> The parties stipulated that the Union's written notification to members/unit employees provided in January 2021 is inadvertently dated January 2020.

## II. ANALYSIS

### A. Board Law

The Board has long held that a party's withdrawal from multiemployer bargaining must be timely and unequivocal in order to be effective. *Walt's Broiler*, 270 NLRB 556, 557 (1984), citing *Retail Associates*, 120 NLRB 388 (1958). See also, *Watson-Rummell Electric Co.*, 277 NLRB 1401, 1401 (1985). A party's withdrawal is timely if it is "given prior to the date set by the contract for modification, or to the agreed upon date to begin the multiemployer negotiations." *Retail Associates*, 120 NLRB at 395 (emphasis added). In determining the effectiveness of an attempt to withdraw from the multiemployer bargaining, the Board first requires that the employer's conduct unconditionally and unequivocally evidence an intent to abandon multiemployer bargaining. *I.C. Refrigeration Service*, 200 NLRB 687, 689 (1972), citing *The Kroger Co.*, 148 NLRB 569, 572-575 (other citations omitted). In *The Carvel Company*, 226 NLRB 111, 112 (1976), the Board found that "[a]n employer may withdraw without the union's consent prior to the start of bargaining by giving unequivocal notice of the intent to abandon the multiemployer unit and to pursue negotiations on an individual employer basis. However, *once negotiations have actually begun, withdrawal can only be effectuated on the basis of 'mutual consent' or 'unusual circumstances.'*" (emphasis added). The rule concerning withdrawal from multiemployer bargaining is designed to prevent disruption of the multiemployer group by a race for bargaining leverage. *The Carvel Company*, 226 NLRB at 112.

In *General Cable Corporation*, 139 NLRB 1123, 1125 (1962), the Board set forth the three-year contract bar rule, stating that a collective-bargaining agreement will only serve as a bar to a rival union's representation petition for a period of three years. A representation petition may be filed within the appropriate open period prior to the third-year anniversary date of the contract, or after the third-year anniversary date of any contract more than three years in duration. The Board has consistently held that parties to a long-term collective-bargaining agreement can "reactivate" the contract bar after the initial term of "reasonable duration" has passed (i.e., three years), but before a rival representation petition is filed, by executing "(1) a new agreement which embodies new terms and conditions, or incorporates by reference the terms and conditions of the long-term contract, or (2) a written amendment which expressly reaffirms the long-term agreement and indicates a clear intent on the part of the contracting parties to be bound for a specific period . . . ." *Southwestern Portland Cement Company*, 126 NLRB 931, 933 (1960). Such agreement or amendment will serve as a bar if it contains "substantial terms and conditions of employment deemed sufficient to stabilize the bargaining relationship." *Appalachian Shale Products, Co.*, 121 NLRB 1160, 1162-1163 (1958). The Board limits its inquiry in such cases to the four corners of the document alleged to bar an election and excludes consideration of extrinsic evidence. *South Mountain Healthcare and Rehabilitation Center*, 344 NLRB 375, 375 (2005); *Waste Management of Maryland*, 338 NLRB 1002, 1003 (2003). The Board's rationale for limiting extrinsic or parole evidence is that the terms of the agreement must be clear from its face so that employees and outside unions may look to it to determine the appropriate time to file a representation petition. *South Mountain Healthcare*, 344 NLRB at 375, citing *Cooper Tire and Rubber Company*, 181 NLRB 509, 509 (1970).

The Board has long held that a petitioned-for unit in a decertification must be coextensive with the certified or recognized unit. *Mo's West*, 283 NLRB 130, 130 (1987), citing *Campbell Soup Company*, 111 NLRB 234 (1955). The contract bar doctrine will ordinarily prevent the holding of an election where a valid collective-bargaining agreement is in place. When a petition for an election is filed for a unit of employees covered by a collective-bargaining agreement, the Board must decide whether the asserted contract constitutes a bar to the election under the contract bar doctrine. A contract can bar a representation election if it conforms to certain requirements. These basic requirements include that the contract be written, signed, and contain substantial terms and conditions of employment sufficient to stabilize the parties' bargaining relationship. *Young Women's Christian Assoc. of Western Massachusetts*, 349 NLRB 762, 766 (2007); *Waste Management of Maryland, Inc.*, 338 NLRB at 1003; *Television Station WVTM*, 250 NLRB 198, 199 (1980); *Appalachian Shale Products Co.*, 121 NLRB at 1162-1163. The doctrine is intended to balance the statutory policies of stabilizing labor relations and facilitating employees' exercise of free choice in the selection or change of a bargaining representative. *Direct Press Modern Litho, Inc.*, 328 NLRB 860, 860 (1999), citing *Appalachian Shale Products Co.*, 121 NLRB 1160 (1958). The doctrine is Board created, not imposed by the Act or judicial case law, and the Board has considerable discretion to formulate and apply its rules. *Bob's Big Boy Family Restaurants v. NLRB*, 625 F.2d 850, 851, 853-854 (9<sup>th</sup> Cir. 1980). The burden of proving contract bar rests with the party asserting it. *Road & Rail Services, Inc.*, 344 NLRB 388, 389 (2005); *Roosevelt Memorial Park, Inc.*, 187 NLRB 517, 517-518 (1970).

## **B. Application of Board Law**

Regarding the question of whether the Employer's withdrawal from the multiemployer bargaining unit was effective, I conclude that it was not, for the following reasons. When signing onto the 2016-2021 CBA, the Employer unequivocally indicated its intention to continue to be bound in multiemployer bargaining unless it gave the requisite 60-day notice of its intent to terminate its obligation prior to the expiration of the agreement. There is no question that had the Union and NFSA not previously commenced negotiations for an extended CBA, the Employer's January 18 written notice of its intent to withdraw from multiemployer bargaining would have been timely pursuant to the renewal language at Article 30 of the 2016-2021 CBA providing that a party's desire to terminate or modify the CBA must be given at least 60 days prior to expiration of the agreement. However, the Employer's written notification provided on January 18 was not provided in advance of the commencement of negotiations in December 2020. Whether or not the negotiations were concluded as of the January 18 withdrawal date, as argued by the Employer, is immaterial as the Board has clearly stated that once negotiations *have actually begun*, an employer's withdrawal from multiemployer bargaining can only be effectuated on the basis of "mutual consent" or "unusual circumstances." *The Carvel Company*, 226 NLRB at 112. Thus, the Employer's withdrawal provided on January 18 could only be effectuated on the basis of "mutual consent" or "unusual circumstances." The Employer's argument that the failure of either NFSA or the Union to notify it of these negotiations is without merit as the Board has declined to extend "the 'unusual circumstances' exception to situations where the multiemployer association fails, either deliberately or otherwise, to inform its employer-members of the start of negotiations." *Chel LaCort*, 315 NLRB 1036, 1036 (1994) ("The 'unusual circumstances' exception under *Retail Associates* has historically been limited to only the most extreme situation, such as where the withdrawing employer can establish that it is faced with dire economic circumstances, such as imminent bankruptcy, or when the



multiemployer unit has dissipated to the point where the unit is no longer a viable bargaining entity.”)

Based on the above, I find that the Employer’s withdrawal from multiemployer bargaining was not timely and unequivocal.

I also find that the 2016-2021 was extended between the Union and NFSA before the Petitioner’s petition was filed in this matter. The new written and signed 2021-2025 extended CBA contains substantive amendments with regard to the unit employees’ wages and other terms and conditions of employment and incorporates previous terms and conditions of the long-term 2016-2021 CBA. The extended CBA further indicates a clear intent on the part of the contracting parties to be bound for a specific period until March 31, 2025. See, *General Cable Corporation*, 139 NLRB at 1125; *Southwestern Portland Cement Company*, 126 NLRB at 933; *Appalachian Shale*, 121 NLRB at 1163-1164; *Young Women's Christian Assoc. of Western Massachusetts*, 349 NLRB at 766 (contrast *Union Bag & Paper Corp.*, 110 NLRB 1631, 1634 (1955) (A mere extension of an expired agreement made pending the negotiation of a new agreement does not constitute a bar)).

For the above reasons, I find that the Employer is bound by the extended 2021-2025 CBA because its withdrawal from multiemployer bargaining was not timely and unequivocal. Accordingly, the 2021-2025 CBA to which the Employer is bound constitutes a bar to the instant petition and the holding of the election. The petitioned-for single unit of the Employer’s employees is not appropriate because it is not coextensive with the existing multiemployer bargaining unit.

### **III. CONCLUSION**

Based upon the entire record<sup>5</sup> in this matter and in accordance with the discussion above, I conclude that the Employer is bound by the extended 2021-2015 CBA because its withdrawal from multiemployer bargaining was not timely and unequivocal. Accordingly, the extended 2021-2015 CBA to which the Employer is bound is a bar to the holding of the election.

Additionally, I conclude and find as follows:

1. The hearing officer's rulings are free from prejudicial error and are affirmed.
2. The Employer is engaged in commerce within the meaning of the Act.<sup>6</sup>
3. The Union is a labor organization within the meaning of Section 2(5) of the Act and claims to represent certain employees of the Employer.

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<sup>5</sup> The Union filed a brief which I have duly considered. The Employer and Petitioner did not file briefs.

<sup>6</sup> The Employer is a State of Kansas Limited Liability Company engaged in the business of fire sprinkler design, sales, installation, and service from its facility located at 5841 North Prospect, Park City, Kansas. During the past year, a representative period, the Employer in the course and conduct of its business operations purchased and received goods and services valued in excess of \$50,000 directly from sources located outside the State of Kansas. Additionally, the Employer annually derives gross annual revenues in excess of \$1,000,000.



4. A question affecting commerce does not exist concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Sections 2(6) and (7) of the Act.

#### **IV. ORDER**

**IT IS ORDERED** that the petition is dismissed.

#### **V. RIGHT TO REQUEST REVIEW**

Pursuant to Section 102.67 of the Board's Rules and Regulations, a request for review may be filed with the Board at any time following the issuance of this Decision until 10 business days after a final disposition of the proceeding by the Regional Director. The request for review must conform to the requirements of Section 102.67 of the Board's Rules and Regulations and must be filed by **June 25, 2021**

Pursuant to Section 102.5(c) of the Board's Rules and Regulations, a request for review must be filed by electronically submitting (E-Filing) it through the Agency's web site ([www.nlr.gov](http://www.nlr.gov)), unless the party filing the request for review does not have access to the means for filing electronically or filing electronically would impose an undue burden. A request for review may be E-Filed through the Agency's website but may not be filed by facsimile. To E-File the request for review, go to [www.nlr.gov](http://www.nlr.gov), select E-File Documents, enter the NLRB Case Number, and follow the detailed instructions. A party filing a request for review must serve a copy of the request on the other parties and file a copy with the Regional Director. A certificate of service must be filed with the Board together with the request for review.

**DATED** at Overland Park, Kansas, this 11<sup>th</sup> day of June 2021.



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William B. Cowen, Acting Regional Director  
National Labor Relations Board, Region 14/Subregion 17  
8600 Farley Street, Suite 100  
Overland Park, Kansas 66212-4677

UNITED STATES GOVERNMENT  
NATIONAL LABOR RELATIONS BOARD

**RC PETITION**

DO NOT WRITE IN THIS SPACE

Case No.

16-RC-271479

Date Filed

1/19/2021

**INSTRUCTIONS:** Unless e-Filed using the Agency's website, [www.nlr.gov](http://www.nlr.gov), submit an original of this Petition to an NLRB office in the Region in which the employer concerned is located. The petition must be accompanied by both a showing of interest (see 6b below) and a certificate of service showing service on the employer and all other parties named in the petition of: (1) the petition; (2) Statement of Position form (Form NLRB-505); and (3) Description of Representation Case Procedures (Form NLRB 4812). The showing of interest should only be filed with the NLRB and should not be served on the employer or any other party.

**1. PURPOSE OF THIS PETITION: RC-CERTIFICATION OF REPRESENTATIVE** - A substantial number of employees wish to be represented for purposes of collective bargaining by Petitioner and Petitioner desires to be certified as representative of the employees. The Petitioner alleges that the following circumstances exist and requests that the National Labor Relations Board proceed under its proper authority pursuant to Section 9 of the National Labor Relations Act.

<b>2a. Name of Employer</b> ISS Action Inc		<b>2b. Address(es) of Establishment(s) involved</b> (Street and number, city, State, ZIP code) 158-12 Rockaway Boulevard Suite 200 NY Queens 11434	
<b>3a. Employer Representative - Name and Title</b> Pamela Newman		<b>3b. Address</b> (If same as 2b - state same) 158-12 Rockaway Boulevard Suite 200 NY Queens 11434	
<b>3c. Tel. No.</b> (718) 978-3000	<b>3d. Cell No.</b>	<b>3e. Fax No.</b> (718) 978-3001	<b>3f. E-Mail Address</b> pnnewman@issaction.com
<b>4a. Type of Establishment</b> (Factory, mine, wholesaler, etc.) Security Systems & Services		<b>4b. Principal product or service</b> Security	
<b>5b. Description of Unit Involved</b> <b>Included:</b>		<b>5a. City and State where unit is located:</b> Laredo, TX	
<b>Excluded:</b>		<b>6a. No. of Employees in Unit:</b> 28	
		<b>6b. Do a substantial number (30% or more) of the employees in the unit wish to be represented by the Petitioner?</b> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>	

**Check One:** ☒ 7a. Request for recognition as Bargaining Representative was made on (Date) \_\_\_\_\_ and Employer declined recognition on or about \_\_\_\_\_ (Date) (If no reply received, so state).  
☐ 7b. Petitioner is currently recognized as Bargaining Representative and desires certification under the Act.

<b>8a. Name of Recognized or Certified Bargaining Agent</b> (If none, so state). International Union, Security, Police and Fire Professionals of America (SPFPA) and its A		<b>8b. Address</b> P.O. Box 16914 TX Fort Worth 76162	
<b>8c. Tel No.</b> (586) 879-5087	<b>8d. Cell No.</b> (586) 879-5087	<b>8e. Fax No.</b> (817) 720-7254	<b>8f. E-Mail Address</b> ryan@spfpa.org
<b>8g. Affiliation, if any</b> International Union, Security, Police and Fire Professionals of America		<b>8h. Date of Recognition or Certification</b> 05/21/2017	
<b>8i. Expiration Date of Current or Most Recent Contract, if any</b> (Month, Day, Year)			


**9. Is there now a strike or picketing at the Employer's establishment(s) involved?** No ☒ If so, approximately how many employees are participating? \_\_\_\_\_  
(Name of labor organization) \_\_\_\_\_, has picketed the Employer since (Month, Day, Year) \_\_\_\_\_.

**10. Organizations or individuals other than Petitioner and those named in items 8 and 9, which have claimed recognition as representatives and other organizations and individuals known to have a representative interest in any employees in the unit described in item 5b above.** (If none, so state)

<b>10a. Name</b>		<b>10b. Address</b>		<b>10c. Tel. No.</b>		<b>10d. Cell No.</b>	
				<b>10e. Fax No.</b>		<b>10f. E-Mail Address</b>	
<b>11. Election Details:</b> If the NLRB conducts an election in this matter, state your position with respect to any such election.				<b>11a. Election Type:</b> ___ Manual <input checked="" type="checkbox"/> ___ Mail ___ Mixed Manual/Mail			
<b>11b. Election Date(s):</b> 2/8/2021		<b>11c. Election Time(s):</b> Mail Ballot		<b>11d. Election Location(s):</b> mail ballot			
<b>12a. Full Name of Petitioner (including local name and number)</b> Steve Maritas Law Enforcement Officers Security Unions LEOSU-CA, LEOS-PBA				<b>12b. Address (street and number, city, state, and ZIP code)</b> ARCO Tower 1055 West 7th Street, 33rd Floor Penthouse CA Los Angeles 90017			
<b>12c. Full name of national or international labor organization of which Petitioner is an affiliate or constituent</b> (if none, so state) Law Enforcement Officers Security & Police Benevolent Association LEOS-PBA,							
<b>12d. Tel No.</b> (213) 205-1855		<b>12e. Cell No.</b> (202) 486-8558		<b>12f. Fax No.</b> (213) 205-1855		<b>12g. E-Mail Address</b> Steve@LEOSUCA.Org	

<b>13. Representative of the Petitioner who will accept service of all papers for purposes of the representation proceeding.</b>			
<b>13a. Name and Title</b>		<b>13b. Address (street and number, city, state, and ZIP code)</b>	
<b>13c. Tel No.</b>	<b>13d. Cell No.</b>	<b>13e. Fax No.</b>	<b>13f. E-Mail Address</b>

I declare that I have read the above petition and that the statements are true to the best of my knowledge and belief.

<b>Name (Print)</b> Steve Maritas	<b>Signature</b> 	<b>Title</b> Organizing Director	<b>Date</b> 1/16/2021 10:22:35
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WILLFUL FALSE STATEMENTS ON THIS PETITION CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)

**PRIVACY ACT STATEMENT**

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. § 151 et seq. The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing representation and related proceedings or litigation. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. Reg. 74942-43 (Dec. 13, 2006). The NLRB will further explain these uses upon request. Disclosure of this information to the NLRB is voluntary; however, failure to supply the information will cause the NLRB to decline to invoke its processes.

Attachment

DO NOT WRITE IN THIS SPACE	
Case 16-RC-271479	Date Filed 1/19/2021

#### Employees Included

All full-time and regular part-time Transportation Security Officers employed by the Company at its Border Patrol facility located in Laredo, Texas, performing guard duties as defined in Section 9(b)(3) of the Act,

#### Employees Excluded

Office clerical employees, sergeants, lieutenants, captains, sector managers, cleaners, mechanics, trainers and all supervisors and all other employees.



UNITED STATES GOVERNMENT  
NATIONAL LABOR RELATIONS BOARD

REGION 16  
819 Taylor St Rm 8A24  
Fort Worth, TX 76102-6107

Agency Website: [www.nlr.gov](http://www.nlr.gov)  
Telephone: (817) 978-2921  
Fax: (817) 978-2928

February 2, 2021

Steve Maritas, Organizing Director  
Law Enforcement Officers Security  
Unions LEOSU-CA, LEOS-PBA  
ARCO Tower  
1055 West 7th Street  
33rd Floor Penthouse  
Los Angeles, CA 90017  
[steve@leosuca.org](mailto:steve@leosuca.org)

Re: ISS ACTION  
Case 16-RC-271479

Dear Mr. Maritas:

The above-captioned case, petitioning for an investigation and determination of representative under Section 9(c) of the National Labor Relations Act, has been carefully investigated and considered.

**Decision to Dismiss:** As a result of the investigation, I find that further proceedings are unwarranted.

The Petitioner, Law Enforcement Officers Security Unions LEOSU-CA, LEOS-PBA, filed a petition on January 19, 2021, seeking to represent all full-time and regular part-time Transportation Security Officers employed by ISS Action at its Border Patrol facility located in Laredo, Texas performing guard duties as defined in Section 9(b)(3) of the Act.

The investigation showed that ISS Action (Employer) succeeded the previous employer as the service contractor for security at the U.S. Customs and Border Protection facility in Laredo, Texas, as of April 1, 2020. The Employer recognized the incumbent union, International Union for Security, Police and Fire Professionals of America (SPFPA) as the employees' collective bargaining representative at the Laredo, Texas facility and began scheduling bargaining sessions with the incumbent union for a successor contract. The Employer and SPFPA reached an agreement, effective July 31, 2020. The employees represented by SPFPA are the same employees the Petitioner seeks to represent in this petition.

In *UGL-UNICCO Service Company*, 357 NLRB No. 76 (2011), the Board established a successor bar that provides a successor employer and an incumbent union a period of six months to negotiate a successor collective bargaining agreement. If the parties are able to reach an agreement within six months, and there was not an open period for filing a petition in the year before the successor employer took over the contract, then there is a bar to further petitions of two years after the effective date of the contract.

Here, the parties reached an agreement within the six-month successor bar period. Since there was not an open period during the year before the Employer became the employer of these employees, there is a two-year contract bar in place until July 31, 2022.

The Petitioner claims, following *Paragon Products Corporation*, 134 NLRB 662 (1961), that the contract between the Employer and SPFPA cannot bar this petition, as it contains an unlawful union security clause violating Texas' right-to-work laws. However, under the *Paragon Products* line of cases, a union security clause must be clearly and unambiguously unlawful—and the challenged sections here are ambiguous. Because these sections are ambiguous, the *Paragon Products* rule cannot prevent the existing contract from barring this petition.

Accordingly, I am dismissing the petition in this matter.

***Right to Request Review:*** Pursuant to Section 102.67 of the National Labor Relations Board's Rules and Regulations, you may obtain a review of this action by filing a request with the Executive Secretary, National Labor Relations Board, 1015 Half Street SE, Washington, DC 20570-0001. The request for review must contain a complete statement of the facts and reasons on which it is based.

***Procedures for Filing Request for Review:*** A request for review must be received by the Executive Secretary of the Board in Washington, DC, by close of business (**5 p.m. Eastern Time**) on **February 17, 2021**, unless filed electronically. If filed electronically, it will be considered timely if the transmission of the entire document through the Agency's website is **accomplished by no later than 11:59 p.m. Eastern Time on February 17, 2021**.

**Consistent with the Agency's E-Government initiative, parties are encouraged, but not required, to file a request for review electronically.** Section 102.114 of the Board's Rules do not permit a request for review to be filed by facsimile transmission. A copy of the request for review must be served on each of the other parties to the proceeding, as well as on the undersigned, in accordance with the requirements of the Board's Rules and Regulations.

Filing a request for review electronically may be accomplished by using the Efiling system on the Agency's website at [www.nlr.gov](http://www.nlr.gov). Once the website is accessed, click on **E-File Documents**, enter the NLRB Case Number, and follow the detailed instructions. The responsibility for the receipt of the request for review rests exclusively with the sender. A failure to timely file the request for review will not be excused on the basis that the transmission could not be accomplished because the Agency's website was off line or unavailable for some other reason, absent a determination of technical failure of the site, with notice of such posted on the website.

Upon good cause shown, the Board may grant special permission for a longer period within which to file a request for review. A request for extension of time, which may also be filed electronically, should be submitted to the Executive Secretary in Washington, and a copy of such request for extension of time should be submitted to the Regional Director and to each of the other parties to this proceeding. A request for an extension of time must include a statement that a copy

has been served on the Regional Director and on each of the other parties to this proceeding in the same manner or a faster manner as that utilized in filing the request with the Board.

Sincerely,



TIMOTHY L. WATSON  
REGIONAL DIRECTOR

cc: Office of the Executive Secretary (by e-mail)

Jonathan G. Axelrod Esq.  
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Scott Brooks  
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28 W. Adams Avenue  
Suite 300  
Detroit, MI 48226  
scott@unionlaw.net



FORM NLRB-502 (RC)  
(4-15)UNITED STATES GOVERNMENT  
NATIONAL LABOR RELATIONS BOARD  
**RC PETITION**DO NOT WRITE IN THIS SPACE  
Case No. **20-RC-267130** Date Filed **10/05/2020**

**INSTRUCTIONS:** Unless e-Filed using the Agency's website, [www.nlr.gov](http://www.nlr.gov), submit an original of this Petition to an NLRB office in the Region in which the employer concerned is located. The petition must be accompanied by both a showing of interest (see 6b below) and a certificate of service showing service on the employer and all other parties named in the petition of: (1) the petition; (2) Statement of Position form (Form NLRB-505); and (3) Description of Representation Case Procedures (Form NLRB 4812). The showing of interest should only be filed with the NLRB and should not be served on the employer or any other party.

**1. PURPOSE OF THIS PETITION: RC-CERTIFICATION OF REPRESENTATIVE** - A substantial number of employees wish to be represented for purposes of collective bargaining by Petitioner and Petitioner desires to be certified as representative of the employees. The Petitioner alleges that the following circumstances exist and requests that the National Labor Relations Board proceed under its proper authority pursuant to Section 9 of the National Labor Relations Act.

<b>2a. Name of Employer</b> Paragon Systems, Inc.		<b>2b. Address(es) of Establishment(s) involved (Street and number, city, State, ZIP code)</b> 13900 Lincoln Park Drive Suite 300 VA Herndon 20171	
<b>3a. Employer Representative - Name and Title</b> Leslie Kaciban Jr.		<b>3b. Address (if same as 2b - state same)</b> 13900 Lincoln Park Drive Suite 300 VA Herndon 20171	
<b>3c. Tel. No.</b> (703) 263-7176	<b>3d. Cell No.</b> (571) 321-0912	<b>3e. Fax No.</b> (703) 263-9157	<b>3f. E-Mail Address</b> LKACIBAN@PARASYS.COM
<b>4a. Type of Establishment (Factory, mine, wholesaler, etc.)</b> Security Systems & Services		<b>4b. Principal product or service</b> Security	
<b>4c. City and State where unit is located:</b> Honolulu, HI			

<b>5b. Description of Unit involved</b>		<b>6a. No. of Employees in Unit:</b> 120
<b>Included:</b> See Attached Page 2 for additional details		<b>6b. Do a substantial number (30% or more) of the employees in the unit wish to be represented by the Petitioner? Yes <input checked="" type="checkbox"/> No <input type="checkbox"/></b>
<b>Excluded:</b> See Attached Page 2 for additional details		

**Check One:** ☐ **7a. Request for recognition as Bargaining Representative was made on (Date) \_\_\_\_\_ and Employer declined recognition on or about (Date) \_\_\_\_\_ (If no reply received, so state).**

☐ **7b. Petitioner is currently recognized as Bargaining Representative and desires certification under the Act.**

<b>8a. Name of Recognized or Certified Bargaining Agent (if none, so state).</b> INTERNATIONAL UNION, SECURITY, POLICE, AND FIRE PROFESSIONALS OF AME!		<b>8b. Address</b> PO Box 694105 HI Mililani 96789	
<b>8c. Tel. No.</b> (808) 953-5423	<b>8d. Cell No.</b> (808) 469-8704	<b>8e. Fax No.</b>	<b>8f. E-Mail Address</b> cheakua@yahoo.com
<b>8g. Affiliation, if any</b> INTERNATIONAL UNION, SECURITY, POLICE, AND FIRE		<b>8h. Date of Recognition or Certification</b> 12/15/2017	<b>8i. Expiration Date of Current or Most Recent Contract, if any (Month, Day, Year)</b> 11/30/2020

**9. Is there now a strike or picketing at the Employer's establishment(s) involved? No** If so, approximately how many employees are participating? \_\_\_\_\_  
(Name of labor organization) \_\_\_\_\_, has picketed the Employer since (Month, Day, Year) \_\_\_\_\_

**10. Organizations or individuals other than Petitioner and those named in items 8 and 9, which have claimed recognition as representatives and other organizations and individuals known to have a representative interest in any employees in the unit described in item 5a above. (If none, so state)**

<b>10a. Name</b>	<b>10b. Address</b>	<b>10c. Tel. No.</b>	<b>10d. Cell No.</b>
		<b>10e. Fax No.</b>	<b>10f. E-Mail Address</b>

**11. Election Details:** If the NLRB conducts an election in this matter, state your position with respect to any such election.

<b>11b. Election Date(s):</b> 10/26/2020	<b>11c. Election Time(s):</b> Requesting a Mail Ballot Election	<b>11a. Election Type:</b> <input type="checkbox"/> Manual <input checked="" type="checkbox"/> Mail <input type="checkbox"/> Mixed Manual/Mail
<b>11d. Election Location(s):</b> Requesting a Mail Ballot Election		

**12a. Full Name of Petitioner (including local name and number)**  
Steve Maritas  
Law Enforcement Officers Security Unions LEOSUPL LEOS-PBA

**12b. Address (street and number, city, state, and ZIP code)**  
ARCO Tower 1055 West 7th Street, 33rd Floor (Penthouse)  
CA Los Angeles 90017

**12c. Full name of national or international labor organization of which Petitioner is an affiliate or constituent (if none, so state)**  
Law Enforcement Officers Security & Police Benevolent Association LEOS-PBA

<b>12d. Tel. No.</b> (808) 212-9831	<b>12e. Cell No.</b> (202) 466-8558	<b>12f. Fax No.</b> (202) 595-3510	<b>12g. E-Mail Address</b> STEVE@LEOSUPL.ORG
--	--	---------------------------------------	---

**13. Representative of the Petitioner who will accept service of all papers for purposes of the representation proceeding.**

<b>13a. Name and Title</b>		<b>13b. Address (street and number, city, state, and ZIP code)</b>	
<b>13c. Tel. No.</b>	<b>13d. Cell No.</b>	<b>13e. Fax No.</b>	<b>13f. E-Mail Address</b>

I declare that I have read the above petition and that the statements are true to the best of my knowledge and belief.

<b>Name (Print)</b> Steve Maritas	<b>Signature</b> Steve Maritas	<b>Title</b> Organizing Director	<b>Date</b> 10/1/2020 22:30:46
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**WILLFUL FALSE STATEMENTS ON THIS PETITION CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)**

**PRIVACY ACT STATEMENT**

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. § 151 et seq. The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing representation and related proceedings or litigation. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. Reg. 74942-43 (Dec. 13, 2006). The NLRB will further explain these uses upon request. Disclosure of this information to the NLRB is voluntary; however, failure to supply the information will cause the NLRB to decline to involve its processes.



Attachment

DO NOT WRITE IN THIS SPACE	
Case 20-RC-267130	Date Filed 10/05/2020

**Employees Included**

all armed and unarmed Protective Security Officers (PSO) employed by Paragon Systems performing guard duties as defined by Section 9(b)(3) of the National Labor Relations Act, assigned to Federal facilities in Hawaii, Guam, Saipan, and American Samoa under the Contract No. HSHQW9-14-A-00001 with the Department of Homeland Security, Federal Protective Service.

**Employees Excluded**

office clerical employees, managerial personnel, supervisors as defined by the National Labor Relations Act, and all other personnel including probationary employees as defined in the present CBA Agreement, nor persons enrolled or participating in pre-hire training programs offered by the Company



UNITED STATES GOVERNMENT  
NATIONAL LABOR RELATIONS BOARD

SUBREGION 37  
300 Ala Moana Blvd Rm 7-245  
Honolulu, HI 96850-7245

Agency Website: [www.nlrb.gov](http://www.nlrb.gov)  
Telephone: (808) 541-2814  
Fax: (808) 541-2818

October 13, 2020

**E-Issued**

Jonathan G. Axelrod, Esq.  
Beins Axelrod, PC  
1717 K Street, N.W., Suite 1120  
Washington, DC 20006

Re: Paragon Systems, Inc.  
Case 20-RC-267130

Dear Mr. Axelrod:

The above-captioned case, petitioning for an investigation and determination of representative under Section 9(c) of the National Labor Relations Act, has been carefully investigated and considered.

***Decision to Dismiss:*** As a result of the investigation, I find that further proceedings are unwarranted.

On October 1, 2020 at about 7:31 p.m. (Pacific Time), a petition was submitted via the Agency's e-filing system, but without the requisite Certificate of Service (COS) or Showing of Interest (SOI). The petition indicated, and the evidence establishes, that the collective-bargaining agreement expires on November 30, 2020. Consequently, October 1, 2020 was the last day of the "window period" in which a petition could be considered timely filed before the beginning of the 60-day insulation period.

On October 2, between approximately 8:30 a.m. and 9:00 a.m. (Hawaii Standard Time), a Board agent from the Subregion 37 Office left two messages for the Petitioner seeking the COS and SOI necessary for filing and docketing. The Subregion 37 Board agent did not receive any responses that day. Additionally, in response to a message that Petitioner left with Region 20 that same day, a Board agent from Region 20 also attempted in vain to reach Petitioner by phone on October 2.

On Saturday, October 3, 2020, the instant petition was faxed to Region 20's office with a COS and a blurred document that appeared to be a copy of the SOI. The faxed COS indicated that the petition was served on the other parties on October 2. Our office received and docketed the faxed, completed petition on Monday, October 5.

Representation petitions must be served on the other parties at the time of filing, and this must be reflected on the COS. NLRB Rules & Regulations Section 102.60(a). The COS must be filed with the petition. *Id.* A petition must also be accompanied by the SOI at the time of filing. NLRB Rules and Regulations Section 102.61(a)(7) and (f). A petition is not considered

complete, and is not processed without both the COS and SOI. Casehandling Manual, Part 2-Representation Cases- Section 11003.1. In this case, the requisite COS and SOI did not accompany the petition that was submitted through the e-filing system on October

1. Accordingly, this petition was not complete and could not have been processed on October 1.

The Intervenor submitted a motion to dismiss the instant petition as untimely. Petitioner submitted an opposition to that motion, to which the Intervenor submitted a response. I have carefully considered these submissions. The Intervenor posits that the Board's Rules compel dismissal of the petition because it was not timely filed. The Petitioner argues that the petition should be considered timely on the asserted basis that the Rules permit the filing and docketing of a petition, standing alone, without perfecting service and submitting the accompanying COS and SOI. It argues that the Board allows for belated service of the petition and submission of those documents at some unspecified point in the future. Petitioner did not provide any legal authority, and I am aware of none, that supports such a proposition. Indeed, that contention is in direct contradiction of the Rules and the Casehandling Manual, *supra*. With regard to its e-filing, the Petitioner professed to experiencing technical glitches while attempting to upload the COS and SOI into the Agency's e-filing system on October 2. However, the Agency's information technology department confirmed that the system was not experiencing technical difficulties on October 1. Of course, any technical difficulties experienced by the Petitioner after October 1 is irrelevant, as the deadline to file was October 1, and the October 3 COS shows that the petition was not served on the parties until October 2.

In sum, October 1 was the last day of the window period for filing the instant petition along with the requisite COS and SOI. However, Petitioner did not serve the petition on the other parties until October 2, and it did not submit the COS and SOI, as required by the Board's Rules, until October 3. As a result, and as explained above, the petition is untimely because it was not served and filed in accordance with the Agency's rules as of October 1. Accordingly, and I am dismissing the petition.

***Right to Request Review:*** Pursuant to Section 102.67 of the National Labor Relations Board's Rules and Regulations, you may obtain a review of this action by filing a request with the Executive Secretary, National Labor Relations Board, 1015 Half Street SE, Washington, DC 20570-0001. A copy of the request for review must be served on each of the other parties, as well as on the undersigned, in accordance with the requirements of the Board's Rules and Regulations. The request for review must contain a complete statement of the facts and reasons on which it is based.

***Procedures for Filing Request for Review:*** Pursuant to Section 102.5 of the Board's Rules and Regulations, a request for review must be filed by electronically submitting (E-Filing) it through the Agency's web site ([www.nlrb.gov](http://www.nlrb.gov)), unless the party filing the request for review does not have access to the means for filing electronically or filing electronically would impose an undue burden. A request for review filed by means other than E-Filing must be accompanied by a statement explaining why the filing party does not have access to the means for filing electronically or filing electronically would impose an undue burden. Section 102.5(e)

of the Board's Rules do not permit a request for review to be filed by facsimile transmission. A copy of the request for review must be served on each of the other parties to the proceeding, as well as on the undersigned, in accordance with the requirements of the Board's Rules and Regulations. The request for review must comply with the formatting requirements set forth in Section 102.67(i)(1) of the Board's Rules and Regulations. Detailed instructions for using the NLRB's E-Filing system can be found in the [E-Filing System User Guide](#).

A request for review must be received by the Executive Secretary of the Board in Washington, DC, by close of business (**5 p.m. Eastern Time**) on **October 27, 2020**, unless filed electronically. If filed electronically, it will be considered timely if the transmission of the entire document through the Agency's website is **accomplished by no later than 11:59 p.m. Eastern Time on October 27, 2020**.

Filing a request for review electronically may be accomplished by using the E-Filing system on the Agency's website at [www.nlr.gov](http://www.nlr.gov). Once the website is accessed, click on **E-File Documents**, enter the NLRB Case Number, and follow the detailed instructions. The responsibility for the receipt of the request for review rests exclusively with the sender. A failure to timely file the request for review will not be excused on the basis that the transmission could not be accomplished because the Agency's website was off line or unavailable for some other reason, absent a determination of technical failure of the site, with notice of such posted on the website.

Upon good cause shown, the Board may grant special permission for a longer period within which to file a request for review. A request for extension of time, which must also be filed electronically, should be submitted to the Executive Secretary in Washington, and a copy of such request for extension of time should be submitted to the Regional Director and to each of the other parties to this proceeding. A request for an extension of time must include a statement that a copy has been served on the Regional Director and on each of the other parties to this proceeding in the same manner or a faster manner as that utilized in filing the request with the Board.

Any party may, within 5 business days after the last day on which the request for review must be filed, file with the Board a statement in opposition to the request for review. An opposition must be filed with the Board in Washington, DC, and a copy filed with the Regional Director and copies served on all the other parties. The opposition must comply with the formatting requirements set forth in §102.67(i)(1). Requests for an extension of time within

which to file the opposition shall be filed pursuant to §102.2(c) with the Board in Washington, DC, and a certificate of service shall accompany the requests. The Board may grant or deny the request for review without awaiting a statement in opposition. No reply to the opposition may be filed except upon special leave of the Board.

Very truly yours,

JILL H. COFFMAN  
Regional Director

By: */s/ Trent Kakuda*

TRENT KAKUDA  
Acting Officer in Charge

cc: Office of the Executive Secretary (by e-mail)

Leslie Kaciban Jr. E-Issued  
Paragon Systems, Inc.  
13900 Lincoln Park Drive, Suite 300  
Herndon, VA 20171

Steve Maritas, Organizing Director E-Issued  
Law Enforcement Officers Security Unions  
LEOSU-PI, LEOS-PBA  
ARCO Tower 1055 West 7th Street 33rd Floor  
(Penthouse)  
Los Angeles, CA 90017

A. Auwae E-Issued  
International Union, Security, Police, and Fire  
Professionals of America (SPFPA) And its  
Local 652/ 653  
PO Box 894105  
Mililani, HI 96789

Matthew J. Clark, Esq. E-Issued  
Gregory, Moore, Brooks & Clark, P.C.  
65 Cadillac Square, Suite 3727  
Detroit, MI 48226-2893

UNITED STATES GOVERNMENT  
NATIONAL LABOR RELATIONS BOARD

**RC PETITION**

DO NOT WRITE IN THIS SPACE

Case No.

**20-RC-269698**

Date Filed

**12/3/2020**

**INSTRUCTIONS:** Unless e-Filed using the Agency's website, [www.nlr.gov](http://www.nlr.gov), submit an original of this Petition to an NLRB office in the Region in which the employer concerned is located. The petition must be accompanied by both a showing of interest (see 6b below) and a certificate of service showing service on the employer and all other parties named in the petition of: (1) the petition; (2) Statement of Position form (Form NLRB-505); and (3) Description of Representation Case Procedures (Form NLRB 4812). The showing of interest should only be filed with the NLRB and should not be served on the employer or any other party.

**1. PURPOSE OF THIS PETITION: RC-CERTIFICATION OF REPRESENTATIVE** - A substantial number of employees wish to be represented for purposes of collective bargaining by Petitioner and Petitioner desires to be certified as representative of the employees. The Petitioner alleges that the following circumstances exist and requests that the National Labor Relations Board proceed under its proper authority pursuant to Section 9 of the National Labor Relations Act.

<b>2a. Name of Employer</b> Paragon Systems Inc		<b>2b. Address(es) of Establishment(s) involved</b> (Street and number, city, State, ZIP code) 13900 Lincoln Park Drive Suite 300 VA Herndon 20171-	
<b>3a. Employer Representative - Name and Title</b> Leslie Kaciban Jr.		<b>3b. Address</b> (If same as 2b - state same) 13900 Lincoln Park Drive Suite 300 VA Herndon 20171-	
<b>3c. Tel. No.</b> (703) 263-7176	<b>3d. Cell No.</b> (571) 321-0912	<b>3e. Fax No.</b> (703) 263-9157	<b>3f. E-Mail Address</b> LKACIBAN@PARASYS.COM
<b>4a. Type of Establishment</b> (Factory, mine, wholesaler, etc.) Security Systems & Services		<b>4b. Principal product or service</b> Security	<b>5a. City and State where unit is located:</b> Honolulu, HI

<b>5b. Description of Unit Involved</b>		<b>6a. No. of Employees in Unit:</b> 120
<b>Included:</b> See Attached Page 2 for additional details		<b>6b. Do a substantial number (30% or more) of the employees in the unit wish to be represented by the Petitioner?</b> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>
<b>Excluded:</b> See Attached Page 2 for additional details		

**Check One:** ☐ 7a. Request for recognition as Bargaining Representative was made on (Date) \_\_\_\_\_ and Employer declined recognition on or about \_\_\_\_\_ (Date) (If no reply received, so state).  
☐ 7b. Petitioner is currently recognized as Bargaining Representative and desires certification under the Act.

<b>8a. Name of Recognized or Certified Bargaining Agent</b> (If none, so state). International Union, Security, Police & Fire Professionals of America SPFPA its amalgam		<b>8b. Address</b> P.O. Box 894105 HI Mililani 96789-6789	
<b>8c. Tel No.</b> (808) 469-8704	<b>8d. Cell No.</b> (808) 469-8704	<b>8e. Fax No.</b>	<b>8f. E-Mail Address</b> choakua@yahoo.com
<b>8g. Affiliation, if any</b> SPFPA		<b>8h. Date of Recognition or Certification</b> 12/15/2017	<b>8i. Expiration Date of Current or Most Recent Contract, if any</b> (Month, Day, Year) 11/30/2020

**9. Is there now a strike or picketing at the Employer's establishment(s) involved?** No \_\_\_\_\_ If so, approximately how many employees are participating? \_\_\_\_\_  
(Name of labor organization) \_\_\_\_\_, has picketed the Employer since (Month, Day, Year) \_\_\_\_\_.

**10. Organizations or individuals other than Petitioner and those named in items 8 and 9, which have claimed recognition as representatives and other organizations and individuals known to have a representative interest in any employees in the unit described in item 5b above.** (If none, so state)

<b>10a. Name</b>	<b>10b. Address</b>	<b>10c. Tel. No.</b>	<b>10d. Cell No.</b>
		<b>10e. Fax No.</b>	<b>10f. E-Mail Address</b>

**11. Election Details:** If the NLRB conducts an election in this matter, state your position with respect to any such election.

<b>11b. Election Date(s):</b> December 26, 2020	<b>11c. Election Time(s):</b> Mail Ballot Election	<b>11d. Election Location(s):</b> Mail Ballot Election
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<b>12a. Full Name of Petitioner (including local name and number)</b> Steve Maritas Law Enforcement Officers Security Unions LEOSU-PI	<b>12b. Address (street and number, city, state, and ZIP code)</b> ARCO Tower 1055 West 7th Street, 33rd Floor (Penthouse) CA Los Angeles 90017-
---	--

**12c. Full name of national or international labor organization of which Petitioner is an affiliate or constituent** (if none, so state)  
Law Enforcement Officers Security & Police Benevolent Association LEOS-PBA

<b>12d. Tel No.</b> (213) 205-1855	<b>12e. Cell No.</b> (202) 486-8558	<b>12f. Fax No.</b> (202) 535-3510	<b>12g. E-Mail Address</b> steve@leosupi.org
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**13. Representative of the Petitioner who will accept service of all papers for purposes of the representation proceeding.**

<b>13a. Name and Title</b>		<b>13b. Address (street and number, city, state, and ZIP code)</b>	
<b>13c. Tel No.</b>	<b>13d. Cell No.</b>	<b>13e. Fax No.</b>	<b>13f. E-Mail Address</b>

**I declare that I have read the above petition and that the statements are true to the best of my knowledge and belief.**

<b>Name (Print)</b> Steve Maritas	<b>Signature</b> Steve Maritas	<b>Title</b> Organizing Director	<b>Date</b> 12/2/2020 20:11:22
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**WILLFUL FALSE STATEMENTS ON THIS PETITION CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)**

**PRIVACY ACT STATEMENT**

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. § 151 et seq. The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing representation and related proceedings or litigation. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. Reg. 74942-43 (Dec. 13, 2006). The NLRB will further explain these uses upon request. Disclosure of this information to the NLRB is voluntary; however, failure to supply the information will cause the NLRB to decline to invoke its processes.

DO NOT WRITE IN THIS SPACE	
Case <b>20-RC-269698</b>	Date Filed <b>12/3/2020</b>

**Employees Included**

all armed and unarmed Protective Security Officers (PSO) employed by Paragon Systems performing guard duties as defined by Section 9(b)(3) of the National Labor Relations Act, assigned to Federal facilities in Hawaii, Guam, Saipan, and American Samoa under the Contract No. HSHQW9-14-A-00001 with the Department of Homeland Security, Federal Protective Service

**Employees Excluded**

office clerical employees, managerial personnel, supervisors as defined by the National Labor Relations Act, and all other personnel including probationary employees as defined in the present CBA Agreement, nor persons enrolled or participating in pre-hire training programs offered by the Company





UNITED STATES GOVERNMENT  
NATIONAL LABOR RELATIONS BOARD

SUBREGION 37  
300 Ala Moana Blvd Rm 7-245  
Honolulu, HI 96850-7245

Agency Website: [www.nlrb.gov](http://www.nlrb.gov)  
Telephone: (808) 541-2814  
Fax: (808) 541-2818

December 18, 2020

**E-Issued**

Jonathan G. Axelrod, Esq.  
Beins Axelrod, P.C.  
1717 K Street, N.W., Suite 1120  
Washington, DC 20006

Re: Paragon Systems Inc  
Case 20-RC-269698

Dear Mr. Axelrod:

The above-captioned case, petitioning for an investigation and determination of representative under Section 9(c) of the National Labor Relations Act, has been carefully investigated and considered.

***Decision to Dismiss:*** On December 3, 2020, Law Enforcement Officers Security Unions LEOSU-PI (Petitioner) filed the instant petition seeking to represent for purposes of collective bargaining a unit of employees of Paragon Systems Inc. (the Employer), which is currently represented by International Union, Security, Police & Fire Professionals of America SPFPA and its Local 652 (Intervenor). On December 9, 2020, I issued an Order to Show Cause Why There Is Not A Contract Bar To The Instant Petition, inviting the parties to submit their respective positions, together with an offer of proof and supporting legal authority. Petitioner submitted a position statement on December 16, 2020, and a Responsive Statement of Position on December 18, 2020. Intervenor submitted a position statement on December 15, 2020. Employer submitted a position statement on December 13, 2020.

After careful consideration of the parties' positions and the proffered evidence, I have decided to dismiss the instant Petition because it is uncontroverted that the Employer and Intervenor are parties to a current collective-bargaining agreement in effect from October 30, 2020 through October 29, 2023 (CBA), which is valid on its face and which predates the December 3, 2020, filing of the petition. In these circumstances, the parties' CBA serves as a bar to the instant petition. *Appalachian Shale Products Co.*, 121 NLRB 1160 (1958).

I hereby deny Petitioner's request that the Region defer consideration of the contract bar issue until the completion of the administrative investigation of the pending unfair labor practice charges in Cases 20-CB-270034 and 20-CB-270039. Those charges allege that the Intervenor breached its duty of fair representation owed to employees by its conduct vis-à-vis employees concerning a contract-ratification vote. However, under extant Board law, a union's internal ratification vote does not impact the validity of a collective-bargaining agreement unless ratification is a condition precedent to contractual validity by *express* provision in the contract itself. *Id.* In those circumstances, which are not present here, the contract is not a bar unless it is ratified and executed prior to the filing of a representation petition. *Id.* It is undisputed here that

the parties' CBA does not require ratification as a condition precedent to its validity, and it thus bars the subject petition.

Based on the above, I am dismissing the instant petition. Petitioner did not cite any legal authority, and I am aware of none, which would require invalidating the parties' CBA as a remedy for the conduct in which Intervenor allegedly engaged. Nevertheless, the dismissal herein is without prejudice to the Petitioner's right to refile the petition, should the resolution of Cases 20-CB-270034 and 20-CB-270039 require such a remedy.

***Right to Request Review:*** Pursuant to Section 102.67 of the National Labor Relations Board's Rules and Regulations, you may obtain a review of this action by filing a request with the Executive Secretary, National Labor Relations Board, 1015 Half Street SE, Washington, DC 20570-0001. A copy of the request for review must be served on each of the other parties, as well as on the undersigned, in accordance with the requirements of the Board's Rules and Regulations. The request for review must contain a complete statement of the facts and reasons on which it is based.

***Procedures for Filing Request for Review:*** Pursuant to Section 102.5 of the Board's Rules and Regulations, a request for review must be filed by electronically submitting (E-Filing) it through the Agency's web site ([www.nlr.gov](http://www.nlr.gov)), unless the party filing the request for review does not have access to the means for filing electronically or filing electronically would impose an undue burden. A request for review filed by means other than E-Filing must be accompanied by a statement explaining why the filing party does not have access to the means for filing electronically or filing electronically would impose an undue burden. Section 102.5(e) of the Board's Rules do not permit a request for review to be filed by facsimile transmission. A copy of the request for review must be served on each of the other parties to the proceeding, as well as on the undersigned, in accordance with the requirements of the Board's Rules and Regulations. The request for review must comply with the formatting requirements set forth in Section 102.67(i)(1) of the Board's Rules and Regulations. Detailed instructions for using the NLRB's E-Filing system can be found in the [E-Filing System User Guide](#).

A request for review must be received by the Executive Secretary of the Board in Washington, DC, by close of business (**5 p.m. Eastern Time**) on **January 5, 2021**, unless filed electronically. If filed electronically, it will be considered timely if the transmission of the entire document through the Agency's website is **accomplished by no later than 11:59 p.m. Eastern Time on January 5, 2021**.

Filing a request for review electronically may be accomplished by using the E-Filing system on the Agency's website at [www.nlr.gov](http://www.nlr.gov). Once the website is accessed, click on **E-File Documents**, enter the NLRB Case Number, and follow the detailed instructions. The responsibility for the receipt of the request for review rests exclusively with the sender. A failure to timely file the request for review will not be excused on the basis that the transmission could not be accomplished because the Agency's website was off line or unavailable for some other reason, absent a determination of technical failure of the site, with notice of such posted on the website.

Upon good cause shown, the Board may grant special permission for a longer period within which to file a request for review. A request for extension of time, which must also be filed electronically, should be submitted to the Executive Secretary in Washington, and a copy of such request for extension of time should be submitted to the Regional Director and to each of the other parties to this proceeding. A request for an extension of time must include a statement that a copy has been served on the Regional Director and on each of the other parties to this proceeding in the same manner or a faster manner as that utilized in filing the request with the Board.

Any party may, within 5 business days after the last day on which the request for review must be filed, file with the Board a statement in opposition to the request for review. An opposition must be filed with the Board in Washington, DC, and a copy filed with the Regional Director and copies served on all the other parties. The opposition must comply with the formatting requirements set forth in §102.67(i)(1). Requests for an extension of time within which to file the opposition shall be filed pursuant to §102.2(c) with the Board in Washington, DC, and a certificate of service shall accompany the requests. The Board may grant or deny the request for review without awaiting a statement in opposition. No reply to the opposition may be filed except upon special leave of the Board.

Very truly yours,

JILL H. COFFMAN  
Regional Director

By: */s/ Jeff Beerman*

JEFF BEERMAN  
Acting Officer in Charge

cc: Office of the Executive Secretary (by e-mail)

Akua K Auwae  
Pacific DHS Director Local 652 President  
International Union, Security, Police & Fire  
Professionals of America (SPFPA) and its Local 652  
P.O. Box 894105  
Mililani, HI 96789-6789

E-Issued

Matthew Clark, Esq.  
Gregory, Moore, Brooks and Clark, P.C.  
28 West Adams, Suite 300  
Detroit, MI 48226

E-Issued

Leslie Kaciban, CPA MBA President  
Paragon Systems Inc  
13900 Lincoln Park Drive Suite 300  
Herndon, VA 20171

E-Issued

Jean Dober, General Counsel  
Paragon Systems, Inc.  
13900 Lincoln Park Drive, Suite 300  
Herndon, VA 20171

E-Issued

Steve Maritas, Organizing Director  
Law Enforcement Officers Security Unions LEOSU-PI  
ARCO Tower 1055 West 7th Street, 33rd Floor  
(Penthouse)  
Los Angeles, CA 90017

E-Issued

**INSTRUCTIONS:** Unless e-Filed using the Agency's website, [www.nlr.gov/](http://www.nlr.gov/), submit an original of this Petition to an NLRB office in the Region in which the employer concerned is located. The petition must be accompanied by both a showing of interest (see 7 below) and a certificate of service showing service on the employer and all other parties named in the petition of: (1) the petition; (2) Statement of Position form (Form NLRB-505); and (3) Description of Representation Case Procedures (Form NLRB 4812). The showing of interest should only be filed with the NLRB and should not be served on the employer or any other party.

1. **PURPOSE OF THIS PETITION: RD-DECERTIFICATION (REMOVAL OF REPRESENTATIVE)** - A substantial number of employees assert that the certified or currently recognized bargaining representative is no longer their representative. The Petitioner alleges that the following circumstances exist and requests that the National Labor Relations Board proceed under its proper authority pursuant to Section 9 of the National Labor Relations Act.

2a. Name of Employer ACB		2b. Address(es) of Establishment(s) involved (Street and number, city, state, ZIP code) 550 W. Ingham ave Ewing - NJ - 08638	
3a. Employer Representative - Name and Title Joshua Deza		3b. Address (If same as 2b - state same) 676 Bloomfield ave #2 Nutley NJ - 07110	
3c. Tel. No. (973) 303-2045	3d. Fax No.	3e. Cell No.	3f. E-Mail Address
4a. Type of Establishment (Factory, mine, wholesaler, etc.) Schools		4b. Principal product or service cleaning	
5a. Description of Unit Involved Included: Montclair School District Excluded: 22 Valley rd. Montclair - NJ - 07042			5b. City and State where unit is located:
6. No. of Employees in Unit 20	7. Do a substantial number (30% or more) of the employees in the unit no longer wish to be represented by the certified or currently recognized bargaining representative? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No		
8a. Name of Recognized or Certified Bargaining Agent Local 32 BS		8b. Affiliation, if any	
8c. Address 225 W. 18th St. New York - NY - 10011		8d. Tel. No. 212-388-3800	8e. Cell No.
		8f. Fax No.	8g. E-Mail Address
9. Date of Recognition or Certification 09/20		10. Expiration Date of Current or Most Recent Contract, if any (Month, Day, Year) 06/21	
11a. Is there now a strike or picketing at the Employer's establishment(s) involved? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		11b. If so, approximately how many employees are participating?	
11c. The Employer has been picketed by or on behalf of (Insert Name) (Insert Address)		a labor organization, of since (Month, Day, Year)	
12. Organizations or individuals other those named in items 8 and 11c, which have claimed recognition as representatives and other organizations and individuals known to have a representative interest in any employees in the unit described in item 5 above. (If none, so state)			
12a. Name	12b. Address	12c. Tel. No.	12d. Fax No.
		12e. Cell No.	12f. E-Mail Address
13. Election Details: If the NLRB conducts an election in this matter, state your position with respect to any such election.		13a. Election Type: <input type="checkbox"/> Manual <input type="checkbox"/> Mail <input type="checkbox"/> Mixed Manual/Mail	
13b. Election Date(s)	13c. Election Time(s)	13d. Election Location(s)	

(b) (6), (b) (7)(C)

(b) (6), (b) (7)(C)

(b) (6), (b) (7)(C)

14b. Tel. No.

14c. Fax No.

14d. Cell No.

14e. E-Mail Address

14f. Affiliation, if any

15. Representative of the Petitioner who will accept service of all papers for purposes of the representation proceeding.

(b) (6), (b) (7)(C)

15b. Title

(b) (6), (b) (7)(C)

(b) (6), (b) (7)(C)

(b) (6), (b) (7)(C)

15e. Fax No.

15f. Cell No.

15g. E-Mail Address

I declare that I have read the above petition and that the statements are true to the best of my knowledge and belief.

(b) (6), (b) (7)(C)

Signed (b) (6), (b) (7)(C)

(b) (6), (b) (7)(C)

Date Filed

4/19/21

## PRIVACY ACT STATEMENT

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. § 151 et seq. The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing representation and related proceedings or litigation. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. Reg. 74942-43 (Dec. 13, 2006). The NLRB will further explain these uses upon request. Disclosure of this information to the NLRB is voluntary; however, failure to supply the information may cause the NLRB to decline to invoke its processes.





UNITED STATES GOVERNMENT  
NATIONAL LABOR RELATIONS BOARD  
REGION 22  
20 WASHINGTON PL  
FL 5  
NEWARK, NJ 07102-3127

Agency Website: [www.nlrb.gov](http://www.nlrb.gov)  
Telephone: (973)645-2100  
Fax: (973)645-3852

June 9, 2021

(b) (6), (b) (7)(C)

Re: ACB  
Case 22-RD-277666

Dear (b) (6), (b) (7)(C)

The above-captioned case, petitioning for an investigation and determination of representative under Section 9(c) of the National Labor Relations Act, has been carefully investigated and considered.

**Decision to Dismiss:** After full consideration and for the reasons explained herein, I have decided to dismiss your petition based on my conclusion that it was untimely filed. On May 26, 2021, you filed a petition seeking to represent a unit of custodians employed by ACB, herein the Employer, who work at schools located throughout the Montclair School District. The investigation revealed that there is currently a valid collective bargaining agreement ("agreement") in place between ACB and Local 32BJ, Service Employees International Union ("the Union") covering the unit of employees involved in the petition. The agreement is effective by its terms for the period between January 1, 2020 and December 31, 2023. The evidence adduced during the investigation established further that the agreement meets the criteria for serving as a bar to the processing of the instant petition. Thus, the contract is a written agreement signed by representatives of both parties, which incorporates specific effective and termination dates, substantial terms and conditions of employment, a valid union security clause, and covers an appropriate unit of employees that encompasses those sought by the petition filed in this matter. See *Hexton Furniture Co.*, 111 NLRB 342 (1955), *J. P. Sand & Gravel Co.*, 222 NLRB 83 (1976), *Frank Hager, Inc.*, 230 NLRB 476 (1977), *Appalachian Shale Products Co.*, 121 NLRB 1160 (1958).

The Board has further held that a valid contract operates as a bar for as much of its term as does not exceed 3 years. *General Cable Corp.*, 139 NLRB 1123, 1125 (1962); *General Dynamics Corp.*, 175 NLRB 1035 (1969). The instant petition was filed in the second year of the parties' agreement. To be timely with respect to an existing contract, the petition must be filed more than 60 days but less than 90 days before the expiration date of the contract. *Leonard Wholesale Meats*, 136 NLRB 1000 (1962). Based upon the last effective date of the parties' 3-year agreement, December 31, 2023, the window period for filing a petition extends from October 2, 2023 to November 1, 2023. Accordingly, as the instant petition was prematurely filed, it is untimely and I am, therefore, dismissing the petition.

Accordingly, I am dismissing the petition in this matter.

***Right to Request Review:*** Pursuant to Section 102.67 of the National Labor Relations Board's Rules and Regulations, you may obtain a review of this action by filing a request with the Executive Secretary, National Labor Relations Board, 1015 Half Street SE, Washington, DC 20570-0001. A copy of the request for review must be served on each of the other parties, as well as on the undersigned, in accordance with the requirements of the Board's Rules and Regulations. The request for review must contain a complete statement of the facts and reasons on which it is based.

***Procedures for Filing Request for Review:*** Pursuant to Section 102.5 of the Board's Rules and Regulations, a request for review must be filed by electronically submitting (E-Filing) it through the Agency's web site ([www.nlrb.gov](http://www.nlrb.gov)), unless the party filing the request for review does not have access to the means for filing electronically or filing electronically would impose an undue burden. A request for review filed by means other than E-Filing must be accompanied by a statement explaining why the filing party does not have access to the means for filing electronically or filing electronically would impose an undue burden. Section 102.5(e) of the Board's Rules do not permit a request for review to be filed by facsimile transmission. A copy of the request for review must be served on each of the other parties to the proceeding, as well as on the undersigned, in accordance with the requirements of the Board's Rules and Regulations. The request for review must comply with the formatting requirements set forth in Section 102.67(i)(1) of the Board's Rules and Regulations. Detailed instructions for using the NLRB's E-Filing system can be found in the [E-Filing System User Guide](#).

A request for review must be received by the Executive Secretary of the Board in Washington, DC, by close of business (**5 p.m. Eastern Time**) on **June 23, 2021**, unless filed electronically. If filed electronically, it will be considered timely if the transmission of the entire document through the Agency's website is **accomplished by no later than 11:59 p.m. Eastern Time on June 23, 2021**.

Filing a request for review electronically may be accomplished by using the E-Filing system on the Agency's website at [www.nlrb.gov](http://www.nlrb.gov). Once the website is accessed, click on **E-File Documents**, enter the NLRB Case Number, and follow the detailed instructions. The responsibility for the receipt of the request for review rests exclusively with the sender. A failure to timely file the request for review will not be excused on the basis that the transmission could not be accomplished because the Agency's website was off line or unavailable for some other reason, absent a determination of technical failure of the site, with notice of such posted on the website.

Upon good cause shown, the Board may grant special permission for a longer period within which to file a request for review. A request for extension of time, which must also be filed electronically, should be submitted to the Executive Secretary in Washington, and a copy of such request for extension of time should be submitted to the Regional Director and to each of the other parties to this proceeding. A request for an extension of time must include a statement that a copy has been served on the Regional Director and on each of the other parties to this proceeding in the same manner or a faster manner as that utilized in filing the request with the Board.



Any party may, within 5 business days after the last day on which the request for review must be filed, file with the Board a statement in opposition to the request for review. An opposition must be filed with the Board in Washington, DC, and a copy filed with the Regional Direction and copies served on all the other parties. The opposition must comply with the formatting requirements set forth in §102.67(i)(1). Requests for an extension of time within which to file the opposition shall be filed pursuant to §102.2(c) with the Board in Washington, DC, and a certificate of service shall accompany the requests. The Board may grant or deny the request for review without awaiting a statement in opposition. No reply to the opposition may be filed except upon special leave of the Board.

Very truly yours,



Eric Schechter  
Acting Regional Director

cc: Office of the Executive Secretary (by e-mail)

ACB  
550 W. INGHAN AVENUE  
EWING, NJ 08638

BRENT GARREN  
DEPUTY GENERAL COUNSEL  
SEIU LOCAL 32BJ  
25 WEST 18TH STREET  
NEW YORK, NY 10011

LOCAL 32 BJ  
25 WEST 28 STREET  
NEW YORK, NY 10011

UNITED STATES OF AMERICA  
NATIONAL LABOR RELATIONS BOARD  
**RD PETITION**

DO NOT WRITE IN THIS SPACE

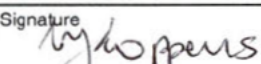
Case No.

28-RD-276160

Date Filed

April 22, 2021

**INSTRUCTIONS:** Unless e-Filed using the Agency's website, [www.nlr.gov/](http://www.nlr.gov/), submit an original of this Petition to an NLRB office in the Region in which the employer concerned is located. The petition must be accompanied by both a showing of interest (see 7 below) and a certificate of service showing service on the employer and all other parties named in the petition of: (1) the petition; (2) Statement of Position form (Form NLRB-505); and (3) Description of Representation Case Procedures (Form NLRB 4812). The showing of interest should only be filed with the NLRB and should not be served on the employer or any other party.

<b>1. PURPOSE OF THIS PETITION: RD- DECERTIFICATION (REMOVAL OF REPRESENTATIVE)</b> - A substantial number of employees assert that the certified or currently recognized bargaining representative is no longer their representative. The Petitioner alleges that the following circumstances exist and requests that the National Labor Relations Board proceed under its proper authority pursuant to Section 9 of the National Labor Relations Act.			
<b>2a. Name of Employer</b> Lufthansa Aviation Training US		<b>2b. Address(es) of Establishment(s) involved (Street and number, city, state, ZIP code)</b> 1658 S. Litchfield Road Bldg 104, Goodyear, AZ 85338	
<b>3a. Employer Representative - Name and Title</b> Jay Gines, Operations Manager		<b>3b. Address (If same as 2b - state same)</b> same	
<b>3c. Tel. No.</b> 623-932-1600	<b>3d. Fax No.</b> 623-399-1390	<b>3e. Cell No.</b> 623-796-1940	<b>3f. E-Mail Address</b> Jay.Gines@lat.dlh.de
<b>4a. Type of Establishment (Factory, mine, wholesaler, etc.)</b> Flight School		<b>4b. Principal product or service</b> Flight Training	
<b>5a. Description of Unit Involved</b> <b>Included:</b> All Instructor Pilots <b>Excluded:</b> All Standards Pilots, Managers, Maintenance, Supporting Personal			<b>5b. City and State where unit is located:</b> Goodyear, AZ
<b>6. No. of Employees in Unit</b> 11		<b>7. Do a substantial number (30% or more) of the employees in the unit no longer wish to be represented by the certified or currently recognized bargaining representative?</b> <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	
<b>8a. Name of Recognized or Certified Bargaining Agent</b> Paul Shepherd		<b>8b. Affiliation, if any</b> IAMAW	
<b>8c. Address</b> PO Box 74811 Phoenix, AZ 85087		<b>8d. Tel. No.</b> 801-201-3715	<b>8e. Cell No.</b> 801-201-3715
		<b>8f. Fax No.</b>	<b>8g. E-Mail Address</b> pshepherd@iamaw.org
<b>9. Date of Recognition or Certification</b>		<b>10. Expiration Date of Current or Most Recent Contract, if any (Month, Day, Year)</b> Decemeber 31, 2021	
<b>11a. Is there now a strike or picketing at the Employer's establishment(s) involved?</b> <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		<b>11b. If so, approximately how many employees are participating?</b>	
<b>11c. The Employer has been picketed by or on behalf of (Insert Name)</b> (Insert Address)		<b>11d. If so, approximately how many employees are participating?</b> a labor organization, of since (Month, Day, Year)	
<b>12. Organizations or individuals other those named in items 8 and 11c, which have claimed recognition as representatives and other organizations and individuals known to have a representative interest in any employees in the unit described in item 5 above. (If none, so state)</b> none			
<b>12a. Name</b>	<b>12b. Address</b>	<b>12c. Tel. No.</b>	<b>12d. Fax No.</b>
		<b>12e. Cell No.</b>	<b>12f. E-Mail Address</b>
<b>13. Election Details:</b> If the NLRB conducts an election in this matter, state your position with respect to any such election.		<b>13a. Election Type:</b> <input type="checkbox"/> Manual <input checked="" type="checkbox"/> Mail <input type="checkbox"/> Mixed Manual/Mail	
<b>13b. Election Date(s)</b> 14 days from filing date	<b>13c. Election Time(s)</b> 9-10 AM and 2-3 PM	<b>13d. Election Location(s)</b> Class Room at LAT US	
<b>14. Full Name of Petitioner</b> Melvin Koppens			
<b>14a. Address (Street and number, city, state, ZIP code)</b> 23656 West Harrison Drive, Buckeye, AZ, 85338		<b>14b. Tel. No.</b> 520-449-5466	<b>14c. Fax No.</b>
		<b>14d. Cell No.</b> 520-449-5466	<b>14e. E-Mail Address</b> mkoppens12@hotmail.com
<b>14f. Affiliation, if any</b> International Association of Machinest and Aerospace Workers			
<b>15. Representative of the Petitioner who will accept service of all papers for purposes of the representation proceeding.</b>			
<b>15a. Name</b> same as 14		<b>15b. Title</b>	
<b>15c. Address (Street and number, city, state, ZIP code)</b>		<b>15d. Tel. No.</b>	<b>15e. Fax No.</b>
		<b>15f. Cell No.</b>	<b>15g. E-Mail Address</b>
<b>I declare that I have read the above petition and that the statements are true to the best of my knowledge and belief.</b>			
<b>Name (Print)</b> Melvin Koppens	<b>Signature</b> 	<b>Title</b>	<b>Date Filed</b> April 14, 2021

**WILLFUL FALSE STATEMENTS ON THIS PETITION CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)****PRIVACY ACT STATEMENT**

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. § 151 et seq. The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing representation and related proceedings or litigation. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. Reg. 74942-43 (Dec. 13, 2006). The NLRB will further explain these uses upon request. Disclosure of this information to the NLRB is voluntary; however, failure to supply the information may cause the NLRB to decline to invoke its processes.

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 28**

**LUFTHANSA AVIATION TRAINING USA INC.**

**Employer**

**and**

**MELVIN KOPPENS, an Employee**

**Case 28-RD-276160**

**Petitioner**

**and**

**INTERNATIONAL ASSOCIATION OF  
MACHINISTS & AEROSPACE WORKERS,  
LOCAL LODGE NO. 519<sup>1</sup>**

**Union**

**DECISION AND ORDER**

The Petitioner seeks decertify the Union as the collective-bargaining representative of a unit of flight instructors and classroom coordinators employed by the Employer in Goodyear, Arizona.

The Union asserts that there is a contract bar to the conduct of an election because the petition was filed before the window period in which a petition could be filed during the one-year term of a renewed collective-bargaining agreement. The Petitioner asserts that there is no contract bar because the petition was filed after the expiration of the initial collective-bargaining agreement and because special circumstances warrant the conduct of an election prior to any applicable window period. The Employer took no position on the issue.

A hearing was held before a Hearing Officer of the National Labor Relations Board (the Board). At the close of the hearing, the Petitioner and the Union made oral arguments on the record in lieu of filing briefs. Having considered the parties' arguments, I find, based on an application of relevant legal precedent to the evidence adduced at hearing, that there is a contract bar to an election, and I am, therefore, dismissing the petition.

---

<sup>1</sup> The parties' names appear as amended at hearing.

## **I. STATEMENT OF THE FACTS**

The Employer and the Union are parties to a collective-bargaining agreement that provides, at Article I:

- 1.1 This Agreement shall be effective from January 1, 2018, to December 31, 2020. Either party may seek to change, modify, or terminate this Agreement by providing sixty (60) day written notice prior to the expiration of this Agreement.
- 1.2 If no opening notice is given as designated above, this Agreement shall continue from year to year and can be changed only through negotiations commenced by written notice of one of the parties to the other as described above, at least sixty (60) days prior to December 31 of the succeeding year.

Neither party has given the other party notice to change, modify, or terminate the agreement.

The petition was filed on April 22, 2021.

## **II. ANALYSIS AND DETERMINATION**

“[T]he Board has long held that an automatically renewed agreement bars an election petition filed during the renewal period.” *ALJUD Licensed Home Care Services*, 345 NLRB 1089, 1089 (2005).

Except in the health care industry and seasonal operations, to be timely with respect to an existing agreement, a petition must be filed more than 60 days but less than 90 days before the expiration date of the agreement. *Leonard Wholesale Meats*, 136 NLRB 1000, 1000 (1962).

Here, the evidence establishes that the collective-bargaining agreement between the Employer and the Union automatically renewed for a one-year period after the end of its initial three-year term because neither party has given the other party notice to change, modify, or terminate the agreement. The renewed collective-bargaining agreement is effective from January 1, 2021 to December 31, 2021.

The window period in which a petition could be filed before the expiration of the renewed collective-bargaining agreement (60 days to 90 days before expiration) is October 3 to November 1, 2021. The petition was filed on April 22, 2021, before that window period. The petition was therefore untimely, and an election is barred by the renewed agreement.

In arguing that the renewed collective-bargaining agreement should not bar an election, the Petitioner cites the following statement by the Board concerning contract-bar rules in *Hexon Furniture*, 111 NLRB 342, 344 (1955): “The most important of these rules is that, in the absence of certain circumstances not present here, the Board will not entertain a representation petition seeking a new determination of the employees’ bargaining representative during the middle period of a valid outstanding collective-bargaining agreement of reasonable duration.”

Highlighting the phrase, “in the absence of certain circumstances not present here,” the Petitioner argues that the following special circumstances warrant the conduct of an election during the term of the renewed collective-bargaining agreement and before the window in which a petition could be timely filed: a majority of unit employees are not members of the Union and are discontent with the Union’s representation, and employees will likely be placed on a four to five month unpaid furlough at some unspecified time based on unspecified events during the last year. The Petitioner did not present evidence in support of the assertion concerning a likely furlough, and that assertion that appears on its face to be speculative.

The circumstances cited by the Petitioner are not circumstances recognized by the Board as warranting the conduct of an election during the term of a collective-bargaining agreement of reasonable duration.

Indeed, any time a decertification petition is filed, it is likely that some number of employees are not members of the union they seek to decertify or are discontent with that union. This is not a special circumstance warranting departure from the Board’s long-standing contract-bar principle but a circumstance that likely exists in virtually every decertification case.

Further, even if, hypothetically, there were a plan for the unit employees to be temporarily furloughed throughout the next window period, this would not deprive them of the opportunity to petition for decertification or to exercise free choice in an election. The unit employees already had the opportunity to file a petition during the window period 60 to 90 days before expiration of the initial three-year collective-bargaining agreement. Moreover, during any future furlough, a petition could be filed, and furloughed employees would be eligible to vote in an election if the unit employees had a “reasonable expectancy of employment in the near future,” *Higgins, Inc.*, 111 NLRB 797, 799 (1955). And, without such an expectancy, they would have no interest warranting participation in an election.

Accordingly, I find that the petition is untimely because there is a contract bar to an election, and I am therefore dismissing the petition.

### **III. CONCLUSION**

Based upon the entire record in this matter and in accordance with the discussion above, I conclude and find as follows:

1. The hearing officer’s rulings are free from prejudicial error and are hereby affirmed.
2. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction herein.<sup>2</sup>

---

<sup>2</sup> The parties stipulated, and I find, that the Employer, Lufthansa Aviation Training USA Inc., an Arizona corporation with an office and place of business in Goodyear, Arizona, is engaged in pilot training for airline customers. During the 12-month period ending April 22, 2021, the Employer, in conducting its business operations described above, purchased and received at its Arizona facility goods valued in excess of \$50,000 directly from points outside the State of Arizona.

3. The Union is a labor organization within the meaning of Section 2(5) of the Act.
4. The petition must be dismissed because there is a contract bar to the conduct of an election.

#### **IV. ORDER**

**IT IS ORDERED** that the petition is dismissed.

#### **RIGHT TO REQUEST REVIEW**

Pursuant to Section 102.67(c) of the Board's Rules and Regulations, you may obtain a review of this action by filing a request with the Executive Secretary, National Labor Relations Board, 1015 Half Street SE, Washington, DC 20570-0001. A copy of the request for review must be served on each of the other parties as well as on the undersigned, in accordance with the requirements of the Board's Rules and Regulations. The request for review must contain a complete statement of the facts and reasons on which it is based.

***Procedures for Filing Request for Review:*** Pursuant to Section 102.5 of the Board's Rules and Regulations, a request for review must be filed by electronically submitting (E-Filing) it through the Agency's web site ([www.nlr.gov](http://www.nlr.gov)), unless the party filing the request for review does not have access to the means for filing electronically or filing electronically would impose an undue burden. A request for review filed by means other than E-Filing must be accompanied by a statement explaining why the filing party does not have access to the means for filing electronically or filing electronically would impose an undue burden. Section 102.5(e) of the Board's Rules do not permit a request for review to be filed by facsimile transmission. A copy of the request for review must be served on each of the other parties to the proceeding, as well as on the undersigned, in accordance with the requirements of the Board's Rules and Regulations. The request for review must comply with the formatting requirements set forth in Section 102.67(i)(1) of the Board's Rules and Regulations. Detailed instructions for using the NLRB's E-Filing system can be found in the [E-Filing System User Guide](#).

A request for review must be received by the Executive Secretary of the Board in Washington, DC, by close of business (**5 p.m. Eastern Time**) on **July 6, 2021**, unless filed electronically. If filed electronically, it will be considered timely if the transmission of the entire document through the Agency's website is **accomplished by no later than 11:59 p.m. Eastern Time on July 6, 2021**.

Filing a request for review electronically may be accomplished by using the E-Filing system on the Agency's website at [www.nlr.gov](http://www.nlr.gov). Once the website is accessed, click on **E-File Documents**, enter the NLRB Case Number, and follow the detailed instructions. The responsibility for the receipt of the request for review rests exclusively with the sender. A failure to timely file the request for review will not be excused on the basis that the transmission could

not be accomplished because the Agency's website was off line or unavailable for some other reason, absent a determination of technical failure of the site, with notice of such posted on the website.

Upon good cause shown, the Board may grant special permission for a longer period within which to file a request for review. A request for extension of time, which must also be filed electronically, should be submitted to the Executive Secretary in Washington, and a copy of such request for extension of time should be submitted to the Regional Director and to each of the other parties to this proceeding. A request for an extension of time must include a statement that a copy has been served on the Regional Director and on each of the other parties to this proceeding in the same manner or a faster manner as that utilized in filing the request with the Board.

Any party may, within 5 business days after the last day on which the request for review must be filed, file with the Board a statement in opposition to the request for review. An opposition must be filed with the Board in Washington, DC, and a copy filed with the Regional Director and copies served on all the other parties. The opposition must comply with the formatting requirements set forth in §102.67(i)(1). Requests for an extension of time within which to file the opposition shall be filed pursuant to §102.2(c) with the Board in Washington, DC, and a certificate of service shall accompany the requests. The Board may grant or deny the request for review without awaiting a statement in opposition. No reply to the opposition may be filed except upon special leave of the Board.

**DATED** at Phoenix, Arizona on the 21<sup>st</sup> day of June, 2021.

/s/ *Cornele A. Overstreet*  
Cornele A. Overstreet, Regional Director



UNITED STATES GOVERNMENT  
NATIONAL LABOR RELATIONS BOARD

**RC PETITION**

**DO NOT WRITE IN THIS SPACE**

Case No.  
29-RC-278199

Date Filed  
06/08/2021

**INSTRUCTIONS:** Unless e-Filed using the Agency's website, [www.nlr.gov](http://www.nlr.gov), submit an original of this Petition to an NLRB office in the Region in which the employer concerned is located. The petition must be accompanied by both a showing of interest (see 6b below) and a certificate of service showing service on the employer and all other parties named in the petition of: (1) the petition; (2) Statement of Position form (Form NLRB-505); and (3) Description of Representation Case Procedures (Form NLRB 4812). The showing of interest should only be filed with the NLRB and should not be served on the employer or any other party.

**1. PURPOSE OF THIS PETITION: RC-CERTIFICATION OF REPRESENTATIVE** - A substantial number of employees wish to be represented for purposes of collective bargaining by Petitioner and Petitioner desires to be certified as representative of the employees. The Petitioner alleges that the following circumstances exist and requests that the National Labor Relations Board proceed under its proper authority pursuant to Section 9 of the National Labor Relations Act.

<b>2a. Name of Employer</b> tri state surgical supply		<b>2b. Address(es) of Establishment(s) involved</b> (Street and number, city, State, ZIP code) 409 hoyt street NY brooklyn 11231	
<b>3a. Employer Representative - Name and Title</b> george hoffman		<b>3b. Address</b> (If same as 2b - state same) 409 hoyt street NY brooklyn 11231	
<b>3c. Tel. No.</b> (718) 624-1000	<b>3d. Cell No.</b>	<b>3e. Fax No.</b> (718) 624-0666	<b>3f. E-Mail Address</b> hoffman@tristatesurgical.com
<b>4a. Type of Establishment</b> (Factory, mine, wholesaler, etc ) Others		<b>4b. Principal product or service</b> surgical supplies	<b>5a. City and State where unit is located:</b> Brooklyn, NY

<b>5b. Description of Unit Involved</b> <b>Included:</b>	<b>6a. No. of Employees in Unit:</b> 30
<b>Excluded:</b>	<b>6b. Do a substantial number (30% or more) of the employees in the unit wish to be represented by the Petitioner?</b> Yes <input checked="" type="radio"/> No <input type="radio"/>

**Check One:** ☒ 7a. Request for recognition as Bargaining Representative was made on (Date) \_\_\_\_\_ and Employer declined recognition on or about \_\_\_\_\_ (Date) (If no reply received, so state).  
☐ 7b. Petitioner is currently recognized as Bargaining Representative and desires certification under the Act.

<b>8a. Name of Recognized or Certified Bargaining Agent</b> (If none, so state). united production workers union, local 17-18 daniel mello		<b>8b. Address</b> 735 Wythe Ave NY brooklyn 11249	
<b>8c. Tel No.</b> (718) 875-2140	<b>8d. Cell No.</b>	<b>8e. Fax No.</b>	<b>8f. E-Mail Address</b>
<b>8g. Affiliation, if any</b>		<b>8h. Date of Recognition or Certification</b>	<b>8i. Expiration Date of Current or Most Recent Contract, if any</b> (Month, Day, Year) 09/30/2020

9. Is there now a strike or picketing at the Employer's establishment(s) involved? ☒ No ☐ If so, approximately how many employees are participating? \_\_\_\_\_  
(Name of labor organization) \_\_\_\_\_, has picketed the Employer since (Month, Day, Year) \_\_\_\_\_.

10. Organizations or individuals other than Petitioner and those named in items 8 and 9, which have claimed recognition as representatives and other organizations and individuals known to have a representative interest in any employees in the unit described in item 5b above. (If none, so state)

<b>10a. Name</b>	<b>10b. Address</b>	<b>10c. Tel. No.</b>	<b>10d. Cell No.</b>
		<b>10e. Fax No.</b>	<b>10f. E-Mail Address</b>

**11. Election Details:** If the NLRB conducts an election in this matter, state your position with respect to any such election.

<b>11a. Election Type:</b> <input checked="" type="radio"/> Manual <input type="radio"/> Mail <input type="radio"/> Mixed Manual/Mail
<b>11b. Election Date(s):</b> asap
<b>11c. Election Time(s):</b> open
<b>11d. Election Location(s):</b> company facility

**12a. Full Name of Petitioner (including local name and number)**  
Joe helps Senese  
transportation, production & warehouse employees union, local 438

<b>12b. Address</b> (street and number, city, state, and ZIP code) 1520 kensington il oak brook 60523
<b>12c. Full name of national or international labor organization of which Petitioner is an affiliate or constituent</b> (if none, so state) national production workers union

<b>12d. Tel No.</b> (630) 575-0560	<b>12e. Cell No.</b> (630) 337-8572	<b>12f. Fax No.</b> (630) 575-0570	<b>12g. E-Mail Address</b> joevincent707@yahoo.com
<b>13. Representative of the Petitioner who will accept service of all papers for purposes of the representation proceeding.</b>			
<b>13a. Name and Title</b>		<b>13b. Address</b> (street and number, city, state, and ZIP code)	
<b>13c. Tel No.</b>	<b>13d. Cell No.</b>	<b>13e. Fax No.</b>	<b>13f. E-Mail Address</b>

I declare that I have read the above petition and that the statements are true to the best of my knowledge and belief.

<b>Name (Print)</b> Joe helps Senese	<b>Signature</b> 	<b>Title</b>	<b>Date</b> 06/04/2021 02:55:34 PM
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**WILLFUL FALSE STATEMENTS ON THIS PETITION CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)**

**PRIVACY ACT STATEMENT**

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. § 151 et seq. The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing representation and related proceedings or litigation. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. Reg. 74942-43 (Dec. 13, 2006). The NLRB will further explain these uses upon request. Disclosure of this information to the NLRB is voluntary; however, failure to supply the information will cause the NLRB to decline to invoke its processes.

Attachment

Employees Included  
production, warehouse, laborers

Employees Excluded  
office, clerical, guards

DO NOT WRITE IN THIS SPACE	
Case	Date Filed

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 29**

**TRI STATE SURGICAL SUPPLY &  
EQUIPMENT LTD.**

**Employer**

**And**

**Case 29-RC-278199**

**TRANSPORTATION, PRODUCTION &  
WAREHOUSE EMPLOYEES UNION, LOCAL 438**

**Petitioner**

**and**

**UNITED PRODUCTION WORKERS UNION,  
LOCAL 17-18**

**Intervenor**

**ORDER DISMISSING PETITION AND WITHDRAWING  
NOTICE OF REPRESENTATION HEARING**

On June 8, 2021, Transportation, Production and Warehouse Employees Union, Local 438, (Petitioner) filed the present petition seeking to represent all full-time and regular part-time production employees, warehouse employees and laborers employed by Tri State Surgical Supply & Equipment Ltd. (Employer) located at 409 Hoyt Street, Brooklyn, New York, and excluding all office employees, clerical employees, guards and supervisors as defined by the Act.

After the Petition was filed, United Production Workers Union, Local 17-18 (Incumbent Union) and the Employer asserted that the petition is barred by an existing collective bargaining agreement between the Employer and the Incumbent Union. The parties executed a Memorandum of Agreement (MOA) on November 17, 2020, extending the term of the collective-bargaining agreement from March 19, 2020, through Midnight March 18, 2023. The MOA contains substantial terms and conditions of employment, has been signed and dated by the parties, and is in effect.

Under these circumstances, a petition must be filed not more than 90 days but over 60 days before the end of the contract period. Petitioner filed this petition on June 8, 2021, more than 90 days before the expiration of the contract bar period. The petition, therefore, is untimely filed.

I find that based on the foregoing, **IT IS ORDERED** that Petitioner's petition is dismissed.

**IT IS FURTHERED ORDERED** that any Notice of Representation Hearing previously issued in this matter is withdrawn.

### **RIGHT TO REQUEST REVIEW**

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Order may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1015 Half Street SE, Washington, D.C. 20570-0001. This request must be received by the Board in Washington by 5 p.m., EST on July 9, 2021. The request may not be filed by facsimile.<sup>1</sup>

**DATED:** June 25, 2021



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KATHY DREW KING  
REGIONAL DIRECTOR  
NATIONAL LABOR RELATIONS  
BOARD  
REGION 29  
TWO METRO TECH CENTER SUITE  
5100  
BROOKLYN, NY 11201-3838

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<sup>1</sup> To file the request for review electronically, go to [www.nlr.gov](http://www.nlr.gov) and select the E-Gov tab. Then click on the E-Filing link on the menu and follow the detailed instructions. Guidance for E-filing is contained in the attachment supplied with the Regional Office's initial correspondence on this matter and is also located under "E-Gov" on the Agency's website, [www.nlr.gov](http://www.nlr.gov).

UNITED STATES GOVERNMENT  
NATIONAL LABOR RELATIONS BOARD

**RC PETITION**

DO NOT WRITE IN THIS SPACE

Case No. 31-RC-276027

Date Filed 4/22/2021

**INSTRUCTIONS:** Unless e-Filed using the Agency's website, [www.nlr.gov](http://www.nlr.gov), submit an original of this Petition to an NLRB office in the Region in which the employer concerned is located. The petition must be accompanied by both a showing of interest (see 6b below) and a certificate of service showing service on the employer and all other parties named in the petition of: (1) the petition; (2) Statement of Position form (Form NLRB-505); and (3) Description of Representation Case Procedures (Form NLRB 4812). The showing of interest should only be filed with the NLRB and should not be served on the employer or any other party.

**1. PURPOSE OF THIS PETITION:** RC-CERTIFICATION OF REPRESENTATIVE - A substantial number of employees wish to be represented for purposes of collective bargaining by Petitioner and Petitioner desires to be certified as representative of the employees. The Petitioner alleges that the following circumstances exist and requests that the National Labor Relations Board proceed under its proper authority pursuant to Section 9 of the National Labor Relations Act.

<b>2a. Name of Employer</b> Paragon Systems, Inc		<b>2b. Address(es) of Establishment(s) involved</b> (Street and number, city, State, ZIP code) 13900 Lincoln Park Drive, Suite 300 VA Herndon 20171	
<b>3a. Employer Representative - Name and Title</b> Jean Dober		<b>3b. Address</b> (If same as 2b - state same) 13900 Lincoln Park Drive, Suite 300 VA Herndon 20171	
<b>3c. Tel. No.</b> (571) 321-0908	<b>3d. Cell No.</b> (202) 680-4230	<b>3e. Fax No.</b>	<b>3f. E-Mail Address</b> jdober@parasys.com
<b>4a. Type of Establishment</b> (Factory, mine, wholesaler, etc.) Security Systems & Services		<b>4b. Principal product or service</b> Security	
<b>5a. City and State where unit is located:</b> Pasadena, CA		<b>5b. Description of Unit Involved</b>	
<b>Included:</b>		<b>6a. No. of Employees in Unit:</b> 50	
<b>Excluded:</b>		<b>6b. Do a substantial number (30% or more) of the employees in the unit wish to be represented by the Petitioner?</b> Yes <input checked="" type="radio"/> No <input type="radio"/>	

**Check One:** ☒ 7a. Request for recognition as Bargaining Representative was made on (Date) \_\_\_\_\_ and Employer declined recognition on or about \_\_\_\_\_ (Date) (If no reply received, so state).  
☐ 7b. Petitioner is currently recognized as Bargaining Representative and desires certification under the Act.

<b>8a. Name of Recognized or Certified Bargaining Agent</b> (If none, so state). SPFPA Local 6 Daniel Lange		<b>8b. Address</b> 4800 Oak Grove Dr Building 310 CA Pasadena 91109	
<b>8c. Tel No.</b> (661) 718-6546	<b>8d. Cell No.</b> (661) 718-6546	<b>8e. Fax No.</b>	<b>8f. E-Mail Address</b> langedaniel1@outlook.com
<b>8g. Affiliation, if any</b> INTERNATIONAL UNION, SECURITY, POLICE AND FIRE		<b>8h. Date of Recognition or Certification</b> 10/01/2019	
		<b>8i. Expiration Date of Current or Most Recent Contract, if any</b> (Month, Day, Year) 10/01/2020	


**9. Is there now a strike or picketing at the Employer's establishment(s) involved?** No ☒ If so, approximately how many employees are participating? \_\_\_\_\_  
(Name of labor organization) \_\_\_\_\_, has picketed the Employer since (Month, Day, Year) \_\_\_\_\_.

**10. Organizations or individuals other than Petitioner and those named in items 8 and 9, which have claimed recognition as representatives and other organizations and individuals known to have a representative interest in any employees in the unit described in item 5b above.** (If none, so state)

<b>10a. Name</b>		<b>10b. Address</b>		<b>10c. Tel. No.</b>		<b>10d. Cell No.</b>	
				<b>10e. Fax No.</b>		<b>10f. E-Mail Address</b>	
<b>11. Election Details:</b> If the NLRB conducts an election in this matter, state your position with respect to any such election.				<b>11a. Election Type:</b> ___ Manual <input checked="" type="radio"/> ___ Mail ___ Mixed Manual/Mail			
<b>11b. Election Date(s):</b> 5/12/2021		<b>11c. Election Time(s):</b> Mail Ballot		<b>11d. Election Location(s):</b> Mail Ballot			
<b>12a. Full Name of Petitioner (including local name and number)</b> Steve Maritas Law Enforcement Officers Security Unions LEOSU-CA				<b>12b. Address (street and number, city, state, and ZIP code)</b> ARCO Tower 1055 West 7th Street, 33rd Floor Penthouse CA Los Angeles 90017			
<b>12c. Full name of national or international labor organization of which Petitioner is an affiliate or constituent</b> (if none, so state) United Federation LEOS-PBA							
<b>12d. Tel No.</b> (213) 205-1855		<b>12e. Cell No.</b> (202) 486-8558		<b>12f. Fax No.</b> (213) 205-1855		<b>12g. E-Mail Address</b> Steve@LEOSUCA.Org	

<b>13. Representative of the Petitioner who will accept service of all papers for purposes of the representation proceeding.</b>			
<b>13a. Name and Title</b>		<b>13b. Address (street and number, city, state, and ZIP code)</b>	
<b>13c. Tel No.</b>	<b>13d. Cell No.</b>	<b>13e. Fax No.</b>	<b>13f. E-Mail Address</b>

I declare that I have read the above petition and that the statements are true to the best of my knowledge and belief.

<b>Name (Print)</b> Steve Maritas	<b>Signature</b> 	<b>Title</b> Organizing Director	<b>Date</b> 04/21/2021 08:50:27 PM
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WILLFUL FALSE STATEMENTS ON THIS PETITION CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)

**PRIVACY ACT STATEMENT**

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UNITED STATES GOVERNMENT  
NATIONAL LABOR RELATIONS BOARD

REGION 31  
11500 W OLYMPIC BLVD., SUITE 600  
LOS ANGELES, CA 90064-1753

Agency Website: [www.nlr.gov](http://www.nlr.gov)  
Telephone: (310)235-7351  
Fax: (310)235-7420

April 27, 2021

Jean Dober  
VP Labor Relations-Corporate Counsel  
Paragon Systems, Inc  
13900 Lincoln Park Drive, Suite 300  
Herndon, VA 20171

Re: Paragon Systems, Inc  
Case 31-RC-276027

Dear Ms. Dober:

This is to advise you that the Petitioner's request to withdraw the petition in the above case has been approved without prejudice.

Very truly yours,

A handwritten signature in black ink, appearing to read "B. GEE", is written over a horizontal line.

BRIAN GEE  
ACTING REGIONAL DIRECTOR

cc: (b) (6), (b) (7)(C)  
Security Police and Fire Professionals of  
America Local 6  
4800 Oak Grove Dr Building 310  
Pasadena, CA 91109

Matthew Clark, Attorney  
Gregory, Moore, Brooks & Clark, PC  
28 W. Adams Avenue, Suite 300  
Detroit, MI 48226-1613

Jonathan Axelrod, ESQ.  
Beins, Axelrod & Keating, P.C.  
1717 K Street, N.W.  
Washington, DC 20006

Steve Maritas, Organizing Director  
Law Enforcement Officers Security  
Unions LEOSU-CA  
ARCO Tower 1055 West 7th Street, 33rd  
Floor Penthouse  
Los Angeles, CA 90017